Section 10 - Cont.

.02 In order to facilitate the accounting and reporting of transactions, certain general ledger accounts have been modified to identify amounts due but not received. These are:

1 117.1 Fund Accounts Receibable - Miscellaneous;

2 117.2 Fund Accounts Receivable - Privacy;

3 117.3 Fund Accounts Receivable - FOI; and

4 offsetting entries will be to Account 621, Fund Accounts Receivable Control. The description of this account as contained in IRM 1717 will be broadened to specifically include the various transactions.

.03 Amounts actually received will be recorded to Accounts 107 and 630. The sub-accounts to 107 are:

1 20-2419.1 Miscellaneous

2 20-2419.2 Privacy

3 30-2419.3 FOI

.04 When it is necessary to refund all or part of fees which have been collected, the general ledger entries shown in .03 above are to be adjusted to reflect the amount of the refund.

Section 11. Correspondence from Requesters

.01 Inquiries concerning erroneous or incomplete orders will be handled by the office which processed the request (Reading Room, for example).

.02 Inquiries regarding amounts paid will be handled by the appropriate Fiscal Management Office.

.03 If an inquiry involves the amount paid and an incomplete or erroneous order, the office receiving the inquiry will contact the other organization concerned to obtain necessary information and will prepare the appropriate response.

.04 Refunds to requesters will be issued by Fiscal Management when there is evidence that duplicate payment or overpayment has been received. As indicated in Section 8.09, refunds of $1 or less will be made only when specifically requested.

.05 When there is no evidence in Fiscal Management files that a duplicate payment or overpayment was actually received, the requester will be asked to furnish a copy of the canceled check (both sides) or other acceptable proof.

Section 12. Fiscal Management Review

When regional Fiscal Management employees have occasion to visit districts or service centers to review Fiscal-related operations, they should include a check of FOI/Privacy operations to determine compliance with

procedures. This would include a random review of the log, billing documents, etc., and possibly a comparison of Fiscal Management records for a given day's transactions. National Office Fiscal Section will occasionally make a similar review of Reading Room operations. Any deficiencies noted will be reported to the Chief, Fiscal Management Branch or to the Fiscal Management Officer, as appropriate.

Section 13. Distribution and Obsolescence of Forms

Automatic distribution of Forms 5423, Invoice for Records Furnished Under the Freedom of Information (FOI) Act or the Privacy Act, will be made without requisition. Forms 4313, Special Information Services Invoice, may be used until Forms 5423 are received. After new Forms 5423 are received, all remaining stocks of Forms 4313 are obsolete and may be destroyed.

Section 14. Reporting Requirements

.01 It is anticipated that special reporting requirements will be imposed, particularly for the Privacy Act. When more definite information is available, any necessary instructions will be issued. All offices should be prepared to report the volume of requests under each of the Acts.

.02 Transactions pertaining to FOI and Privacy are to be included in the General Ledger Trial Balance, Statement of Transactions, Monthly Statement of General Ledger Entries, and any other affected reports. Instructions for these reports are contained in IRM 1650, Fiscal Reports Handbook.

Section 15. Effect on Other Documents

.01 This supplements 230 and 46(12) of IRM 1717, Administrative Accounting Handbook; 221.5, 221.(10) and 231.1 of IRM 1650, Fiscal Reports Handbook; Chapter (21)00 of IRM 1272, Disclosure of Official Information Handbook; and IRM 1273, Privacy Handbook (to be issued).

.02 The following Manual Supplements are superseded:

CR 1(19)G-34, dated July 14, 1967

CR 12G-93, dated October 1, 1974

.03 These effects should be annotated in pen-and-ink by the text affected with a reference to this Supplement.

Fiscal Management Officer

manual supplement

Department of the Treasury | Internal Revenue Service | 12G-139

February 6, 1976

Effect of the Privacy Act of 1974 on Disclosure Instructions in IRM 1272, Disclosure of Official Information Handbook

Section 1. Purpose

This Supplement outlines the effect of the Privacy Act of 1974 on the provisions of the Disclosure of Official Information Handbook, IRM 1272. Those instructions which are not subject to the disclosure provisions of the Privacy Act, those which must be suspended pending clarification of their effect on such provisions, and those which are obsolete are noted in this Supplement.

Section 2. General

.01 IRM 1272, Disclosure of Official Information Handbook, provides instructions concerning the disclosure of information from tax returns and other Service documents pursuant to 26 U.S.C. 6103 and other statutory and regulatory provisions described in the Handbook.

.02 Since records other than those concerning an individual are not subject to the provisions of the Privacy Act of 1974, existing instructions concerning such records should be followed. For example, a disclosure of information from a corporation tax return to a shareholder, a United States Attorney, or a State tax official should be processed under current procedures.

Section 3. Conditions of Disclosure - Privacy Act of 1974

.01 The Privacy Act of 1974 provides for eleven exceptions concerning the disclosure of information from an individual's records without the individual's written consent. These exceptions and their statutory language in 5 U.S.C. 552a(b) are as follows:

1 "to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

2 "required under section 552 of this title;

3 "for a routine use as defined in subsection (a)(7) of this section and described under subsection (e) (4)(D) of this section;

4 "to the Bureau of the Census for purpose of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

5 "to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

6 "to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

7 "to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

8 "to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

9 "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

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Section 3--Cont.

(10) "to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or
(11) "pursuant to the order of a court of competent jurisdiction."

Section 4. Effect on Provisions of IRM 1272

.01 Chapters in IRM 1272 which are of an informational nature and not subject to the provisions of the Privacy Act of 1974 are:

1 Chapter 100 - General
2 Chapter 300 - Requests Requiring Commissioner's Approval
3 Chapter 500 - Information and Documents of a Confidential Nature
4 Chapter 600 - Furnishing Copies of Returns and Documents
5 Chapter 700 - Use of Seals
6 Chapter 800 - Admissibility of Certified Copies in Evidence

.02 Chapters in IRM 1272 which deal exclusively with the disclosure of information from a corporation tax return or an exempt organization's returns and its application for exemption and not subject to the provisions of the Privacy Act of 1974 are:

1 Chapter 900 - Inspection of Corporation Returns by Shareholder
2 Chapter (20)00 - Exempt Organization Information

.03 Chapters in IRM 1272 which contain instructions concerning the disclosure of information from an individual's records and which are consistent with the disclosure provisions of the Privacy Act of 1974 (see Section 3 above) are as follows, along with the provision of 5 U.S.C. 552a(b) which permits the Service to continue its present practice of furnishing information from an individual's records as described in those Chapters.

1 Chapter 200 - Requests for Inspection of Returns Which May Be Processed by Directors	5 U.S.C. 552a(b)(3)
2 Chapter (10)00 - Inspection of Returns by United States Attorneys and the Department of Justice	5 U.S.C. 552a(b)(3),(b)(7)
3 Chapter (11)00 - Use of Returns in Litigation	5 U.S.C. 552a(b)(3)
4 Chapter (12)00 - Inspection of Returns by States, the District of Columbia, Puerto Rico, and Possessions of the United States	5 U.S.C. 552a(b)(3)
5 Chapter (13)00 - Inspection of Returns by Committees of Congress	5 U.S.C. 552a(b)(3),(b)(9)
6 Chapter (14)00 - Inspection of Returns by Department of the Treasury	5 U.S.C. 552a(b)(1)
7 Chapter (15)00 - Inspection of Returns by Other Federal Agencies	5 U.S.C. 552a(b)(3),(b)(7)
8 Chapter (16)00 - Inspection of Returns by Federal Agencies Authorized to Inspect Returns by Executive Order	5 U.S.C. 552a(b)(3)
9 Chapter (18)00 - Testimony	5 U.S.C. 552a(b)(3),(b)(11)
(10) Chapter (19)00 - Special Tax Check Reports	5 U.S.C. 552a(b)(1),(b)(3)
(11) Chapter (21)00 - Freedom of Information	5 U.S.C. 552a(b)(2)
(12) Chapter (22)00 - Foreign Tax Authority Disclosures	5 U.S.C. 552a(b)(3)
(13) Chapter (23)00 - Economic Stabilization Disclosure Matters	5 U.S.C. 552a(b)(3)
(14) Chapter (24)00 - Disclosure of Information to the General Accounting Office	5 U.S.C. 552a(b)(3),(b)(10)
(15) Chapter (25)00 - Disclosure of Tax Information in Answering Congressional Inquiries	5 U.S.C. 552a(b) (Individual consents.)

Section 4--Cont. 3 12 G-134

.04 The instructions in the following portions of Chapter (17)00 are suspended concerning the disclosure of information from an individual's records pending clarification of the applicability of such instructions on the disclosure provisions of the Privacy Act of 1974: (17)24:(4), (17)25, (17)26, (17)53:(2), (17)74.

.05 The instructions in the following portions of Chapter (17)00 remain in effect: (17)10, (17)21, (17)22, (17)23, (17)24:(1), (17)24:(2), (17)24:(5), (17)27, (17)29, (17)30, (17)51, (17)52, (17)53:(1), (17)71, (17)72, (17)73, (17)80, (17)90, (17)(10)0, (17)(11)0, (17)(12)0, (17)(13)0, (17)(15)0, (17)(16)0, (17)(17)0, (17)(18)0, (17)(19)0.

.06 The following portions of Chapter (17)00 are obsolete: (17)24:(3), (17)40, (17)60, (17)(14)0.

.07 Subsection (17)28 is amended to read as follows:

> "Requests in emergency situations must be decided on the basis of best judgment. For example, when a member of a family is critically ill and not expected to live but a short time, the offer to forward a letter would not be a satisfactory response, under the circumstances. In those cases, as provided by 5 U.S.C. 552a(b)(8), disclosure of address information may be made by the Systems Manager to a Congressman or a close member of the family. Taxpayer notification requirements must be met. Requests made by someone other than a Congressman or a close member of the family should be brought to the attention of the Disclosure Staff."

.08 Requests for information from an individual's records which were formerly processed under the now suspended sections of Chapter (17)00 should be forwarded to the National Office, Attention: Chief, Disclosure Staff.

.09 Requests for information described in Chapter (17)00 from other than an individual's records may continue to be processed as provided in this chapter.

Section 5. Special Instructions

.01 Although instructions concerning disclosures from an individual's records are consistent with the Privacy Act as cited above, there are certain procedures which must be followed.

1 Accounting requirements under 5 U.S.C. 552a(c), and access to and amendment of records requirements under 5 U.S.C. 552a(d) shown in MS 12G-126, CR 1(15)G-97, 40G-112, 51G-124, 6SG-11, 7(16)G-1, 93G-156, (11)2G-7, Access and Amendment and Accounting of Disclosures--Privacy Act of 1974, dated November 14, 1975, must be followed as applicable.

2 The notification requirements under 5 U.S.C. 552a(e)8 which are set forth in MS 12G-128, Notifying Individuals that Their Records Were Made Available to a Person Under Compulsory Legal Process, dated November 20, 1975, are to be followed as appropriate.

Section 6. Effect on Other Documents

.01 This amends and or supplements all Chapters of IRM 1272, Disclosure of Official Information Handbook. This "effect" should be annotated by pen and ink on the first page of each Chapter, with a reference to this Supplement.

.02 This also supplements IRM 1273, Privacy Handbook (to be issued).

Willie E. Williams
Deputy Commissioner

those which meet the requirements of paragraph (k) of this section, must also meet one of the following requirements:

(1) * * *

(2) * * *

* * * * * *

(j) *Secondary financing.*

* * * * * *

(4) For those projects which meet the eligibility requirements contained in paragraph (k) of this section, any additional obligations on the project in connection with the insured transaction shall be in an amount approved by the Commissioner and represented by such credit and security instruments as are approved by the Commissioner.

(k) *Additional eligibility requirements for a mortgage refinancing a project financed with State or local assistance.* Projects which were constructed through State or local assistance shall be entitled to the benefits of the special eligibility provisions contained in this section by meeting the following additional requirements:

(1) Construction of the project must have commenced before December 31, 1975, and the project shall have been fully completed prior to January 1, 1976, and after completion of the project, an application for insurance shall have been filed prior to January 1, 1976.

(2) The project shall have been constructed under a State or local program providing assistance through loans, loan insurance or tax abatement, which form of assistance shall be approved by the Commissioner.

(3) The mortgage which is to be insured on the project is part of a portfolio of mortgages, all of which have been approved for mortgage insurance by the Commissioner. The Commissioner, by agreement with the mortgagees and the State government, or agency thereof, shall determine the size and amount of an eligible portfolio, and the conditions under which the portfolio may be increased or decreased.

(4) The Commissioner has entered into an agreement with a State, or agency thereof, pursuant to a State program, whereby the State has appropriated money which shall be placed in a special fund to be used to reimburse the Commissioner in an amount not less than one-half of the insurance claims which the Commissioner pays on defaulted mortgages within all approved portfolios:

Provided, however, That such payments shall continue until the total amount paid by the State, or agency, to the Commissioner on each approved portfolio equals a specified percentage of each such portfolio, as approved by the Commissioner, but in no event less than 5 percent of the outstanding principal balances of the mortgages in an approved portfolio. The payments to the Commissioner by the State, or agency, shall commence on the date of the first claim paid by the Commissioner on a mortgage in a portfolio and shall continue on each and every claim paid thereafter until the State, or agency, has reached the maximum payment set forth in the agreement. The State, or agency, shall agree that the special fund established to reimburse the Commissioner for payment of claims shall remain in existence until payments by the State to the Commissioner have reached the maximum amount specified in the agreement. The agreement shall also contain assurances by the State or agency that State law provides that:

(i) The projects securing the mortgages in each portfolio shall not be subject to rent controls by the State, or a political subdivision thereof, or by any authority regulating rents pursuant to State or local law, and

(ii) Any tax abatement or exemption in effect, or established, at the time of application for mortgage insurance shall continue so long as the mortgage is insured or held by the Commissioner, or the project is owned by the Commissioner.

(5) For those projects in which the owner has entered into a contract with the Commissioner for interest reduction payments pursuant to the proviso in Section 236(b) of the National Housing Act, the parties must agree to the modification of the interest reduction contract to reflect changes necessitated by insurance of a mortgage on the project pursuant to this section.

* * * * * *

2. Section 207.259(a) shall be amended to read as follows:

§ 207.259 Insurance benefits.

(a) *Method of payment.* Upon either an assignment of the mortgage to the Commissioner or a conveyance of the property to him in accordance with the requirements of § 207.258, payment of an insurance claim shall be made in cash, in debentures, or in a combination of both, as determined by the Commissioner at the time of payment, except that where the mortgage is insured pursuant to (1) Section 223(e) of the National Housing Act, or (2) Section 223(f) of the Act and at the time of the insurance endorsement, the mortgage met the special eligibility requirements contained in Section 207.32a(k), such claim shall be paid in cash, unless the mortgagee files a written request, with the application, for payment in debentures. A claim paid in cash on a mortgage insured pursuant to Section 223(e) shall be paid from the Special Risk Insurance Fund. If the mortgagee files an application for payment in debentures on a claim on a mortgage insured pursuant to Section 223(e) or 223(f), the claim shall be paid by issuing debentures and by paying any balance in cash.

* * * * * *

(Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).)

Effective date. These amendments will be effective May 14, 1976.

It is hereby certified that the economic and inflationary impacts of this interim regulation have been carefully evaluated in accordance with OMB Circular A-107.

DAVID S. COOK,
Assistant Secretary for Housing Production and Mortgage Credit—Federal Housing Administration Commissioner.

[FR Doc.76-14121 Filed 5-18-76;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

PART 601—STATEMENT OF PROCEDURAL RULES

Publication and Public Inspection of Records

PREAMBLE

This document contains amendments to the Statement of Procedural Rules of the Internal Revenue Service (26 CFR Part 601) to conform such rules to the Act of November 21, 1974 (Public Law 93-502) which amended the Freedom of Information Act (5 U.S.C. 552), and to the Department of the Treasury regulations in 31 CFR Part 1, implementing Public Law 93-502.

In general, the amendments describe those matters which the Freedom of Information Act exempts from its disclosure requirements. They provide examples of specific Internal Revenue matters which are protected under these exempt categories. In particular, matters to be kept secret in the interest of national defense or foreign policy pursuant to Executive order must be, in fact, properly classified under established criteria pursuant to such Executive order. Additionally, the conditions are set forth under which investigatory records compiled for law enforcement purposes are exempt. The amendments provide that disclosure will be made of any portion of a requested record which conveys meaningful information after any exempted portion of such a record has been deleted.

The amendments provide for the public inspection of Internal Revenue Service records and the maintenance of current indexes of certain records. They also set forth information regarding the current locations of, and the materials which are available in, the National Office and Regional Office reading rooms, as well as the addresses of officials to whom requests for disclosure of records should be addressed.

The amendments provide the procedure for making a request for records of the Internal Revenue Service, the procedure for appeal of an initial determination to deny the request, the procedure for judicial review of the Internal Revenue Service determination as to the disclosure of records, and the procedure for proceeding against the officer or employee who denied the request for records. The amendments designate the officials who are to make initial determinations as to the whether to grant requests

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for records and state that the Commissioner or his delegate is to make the appellate administrative determinations. Initial determinations are to be made within 10 working days after the date of the receipt except where this time limitation is waived or extension is authorized. Appellate determinations are to be made within 20 working days after the date of the receipt of the appeal. Under unusual circumstances, a 10-day extension may be invoked. If such an extension is invoked in connection with an initial determination, the proposed amendments provide that any unused days of the 10-day extension period may be invoked in connection with an administrative appeal from the initial determination.

The amendments provide for the disclosure of certain newly specified material, and set forth the schedule of fees for search and duplication services, the criteria for reduction or waiver of fees, and the procedure for securing payment when the fee is estimated to be $50 or more. They also eliminate the minimum fees previously in effect. The fee schedule is applicable to the described services.

ADOPTION OF AMENDMENTS

In order to conform the Statement of Procedural Rules (26 CFR Part 601) to the Act of November 21, 1974 (Public Law 93-502; 88 Stat. 1561) and to the Department of the Treasury regulations in 31 CFR Part 1, the Statement of Procedural Rules is hereby amended as follows.

Paragraph 1. Section 601.701 is amended by revising so much of paragraph (a) as follows subparagraph (3) thereof, by revising subparagraph (1) of paragraph (b), and by adding new subparagraph (4) at the end of paragraph (b). These revised and added provisions read as follows:

§ 601.701 Publicity of information.

(a) *General.*

(3) * * *

The provisions of section 552 are intended to assure the right of the public to information. Section 552 is not authority to withhold information from Congress. Subject only to the exemptions set forth in paragraph (b) of this section, the public generally or any member thereof shall be afforded access to information or records in the possession of the Internal Revenue Service. Such access shall be governed by the regulations in this subpart and those in 31 CFR Part 1 (relating to disclosure of Treasury Department records).

(b) *Exemptions*—(1) *In general.* Under 5 U.S.C. 552(b), the disclosure requirements of section 552(a) do not apply to certain matters which are:

(i) (A) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of the national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(ii) Related solely to the internal personnel rules and practices of the Internal Revenue Service which communicate to Internal Revenue Service personnel information or instructions relating to (A) enforcement tolerances and criteria with respect to the allocation of resources, (B) criteria for determining whether or not a case merits further enforcement action, or (C) enforcement tactics, including but not limited to investigative techniques, internal security information, protection of identities of confidential sources of information used by the Service, and techniques for evaluating, litigating, and negotiating cases of possible violations of civil or criminal laws;

(iii) Specifically exempted from disclosure by statute, as described in paragraph (d) (2) of this section;

(iv) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) Interagency or intraagency memorandums or letters which would not routinely be available by law to a party other than an agency in litigation with the agency, including communications (such as internal drafts, memorandums between officials or agencies, opinions and interpretations prepared by agency staff personnel or consultants for the use of the agency, and records of the deliberations of the agency or staff groups) (A) which the Internal Revenue Service has received from another agency, (B) which the Internal Revenue Service generates in the process of issuing an order, decision, ruling or regulation, drafting proposed legislation, or otherwise carrying out its functions and responsibilities or (C) which is the attorney work product of the Office of the Chief Counsel or is generated by that Office as attorney for the Internal Revenue Service;

(vi) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(vii) Investigatory records compiled for law enforcement purposes, including records prepared in connection with civil, criminal or administrative Government litigation and adjudicative proceedings, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and in the case of a record compiled by a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(viii) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(ix) Geological and geophysical information and data, including maps, concerning wells.

* * * * *

(4) *Segregable portions of records.* Any reasonably segregable portion of a record shall be provided to any person making a request for such record, after deletion of the portions which are exempt under 5 U.S.C. 552(b) (see paragraph (b) (1) of this section). The term "reasonably segregable portion" as used in this subparagraph means any portion of the record requested which is not exempt from disclosure under 5 U.S.C. 552 (b), and which, after deletion of the exempt material, still conveys meaningful information which is not misleading.

Par. 2. Section 601.702 is amended by revising so much of paragraph (b) (1) as follows subdivision (iii) thereof; by revising paragraph (b) (3) (i), (ii), and (iii); by revising paragraph (c); by revising paragraph (d) (5), (6), and (7); by adding a new subparagraph (10) at the end of paragraph (d); and by adding a new paragraph (f) immediately after paragraph (e). These revised and added provisions read as follows:

§ 601.702 Publication and public inspection.

* * * * * * *

(b) *Public inspection and copying*—(1) *In general.* * * *

(iii) * * *

The Internal Revenue Service is also required by 5 U.S.C. 552(a) (2) to maintain and make available for public inspection and copying current indexes identifying any matter described in (b) (1) (i) through (iii) of this paragraph which is issued, adopted, or promulgated after July 4, 1967, and which is required to be made available for public inspection or published. In addition, the Internal Revenue Service will also promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the FEDERAL REGISTER that the publication would be unnecessary and impracticable, in which case the Internal Revenue Service will nonetheless provide copies of such indexes on request at a cost not to exceed the direct cost of duplication. No matter described in (b) (1) (i) through (iii) of this paragraph which is required by this section to be made available for public inspection or published may be relied upon, used, or cited as precedent by the Internal Revenue Service against a party other than an agency unless such party has actual and timely notice of the terms of such matter or unless the matter has been indexed and either made available for inspection or published, as provided by this subparagraph. This subparagraph applies only to matters which have precedential significance. It does not apply, for example, to any ruling or advisory interpretation issued to a taxpayer on a particular transaction or set of facts which applies only to that transaction or set of facts. This subparagraph

does not apply to matters which have been made available pursuant to paragraph (a) of this section.

• • • • •

(2) *Public reading rooms.*—(i) *In general.* The National Office and each regional office of the Internal Revenue Service will provide a reading room or reading area where the matters described in paragraph (b) (1) (i) through (iii) of this section which are required by such paragraph to be made available for public inspection or published, and the current indexes to such matters, will be made available to the public for inspection and copying. Indexes of such materials issued by offices other than the National Office will be maintained in the reading room of the region of issuance as well as in the National Office reading room, but the material itself will be available only in the regional reading room. Copies of materials described in paragraph (b) (1) (i) through (iii) of this section which are controlled by officers in the National Office (see paragraph (g) of this section) will not be made available in regional office reading rooms. The reading rooms will contain other matters determined to be helpful for the guidance of the public, including a complete set of rules and regulations (except those pertaining to alcohol, tobacco, firearms, and explosives) contained in this title, any Internal Revenue matters which may be incorporated by reference in the FEDERAL REGISTER (but not a copy of the FEDERAL REGISTER so doing) pursuant to paragraph (a) (2) (i) of this section, a set of Cumulative Bulletins, and copies of various Internal Revenue Service publications, such as the description of forms or publications contained in Publication No. 481. Fees will not be charged for access to materials in the reading rooms, but fees will be charged for copying as provided in paragraph (f) of this section. The public will not be allowed to remove any record from a reading room.

(ii) *Addresses of public reading rooms.* The addresses of the reading rooms are as follows:

NATIONAL OFFICE

Mailing address: Chief, Disclosure Staff, Internal Revenue Service, P.O. Box 980, Ben Franklin Station, Washington, D.C. 20044.
Location: 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

NORTH ATLANTIC REGION

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 90 Church Street, New York, New York 10007.

Location: Same as mailing address.

MID-ATLANTIC REGION

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, Box 12605, Philadelphia, Pennsylvania 19106.

Location: 8th Floor, Federal Office Building, 600 Arch Street, Philadelphia, Pennsylvania 19106.

SOUTHEAST REGION

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, P.O. Box 926, Atlanta, Georgia 30301.
Location: 275 Peachtree Street, N.E., Atlanta, Georgia.

MIDWEST REGION

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, One North Wacker Drive, Chicago, Illinois 60606.

Location: Same as mailing address.

CENTRAL REGION

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, P.O. Box 2118, Cincinnati, Ohio 45201.
Location: Federal Office Building, 550 Main Street, Cincinnati, Ohio.

SOUTHWEST REGION

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 1100 Commerce Street, Dallas, Texas 75202.
Location: Same as mailing address.

WESTERN REGION

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 450 Golden Gate Avenue, Box 36040, San Francisco, California 94102.
Location: Same as mailing address.

(iii) *Copying facilities.* The National Office and each regional office will provide facilities whereby a person may obtain copies of material located on the shelves of the reading rooms. (For schedule of fees for copying see paragraph (f) (4) of this section.)

• • • • •

(c) *Specific requests for other records.*—(1) *In general.* Subject to the application of the exemptions described in paragraph (b) of § C01.701, the Internal Revenue Service will, in conformance with 5 U.S.C. 552(a) (3), make reasonably described records available to a person making a request for such records which conforms in every respect with the rules and procedures set forth in this subpart. This paragraph applies only to records in being which are in the possession or control of the Internal Revenue Service.

(2) *Requests for records not in control of the Internal Revenue Service.* (i) Where the request is for a record which is determined to be in the possession or under the control of a constituent unit of the Department of the Treasury other than the Internal Revenue Service the request for such record will immediately be transferred to the appropriate constituent unit and the requester notified to that effect. Such referral will not be deemed a denial of access within the meaning of these regulations. The constituent unit of the Department to which such referral is made will treat such request as a new request addressed to it and the time limits for response set forth in 31 CFR Part 1.5 (g) and (h) (relating to disclosure of Treasury Department records) shall commence when the referral is received by the designated office or officer of the constituent unit. Where the request is for a record which is determined not to be in the possession or control of any constituent unit of the Department of the Treasury, the requester will be so advised and the request will be returned to the requester.

(ii) Where the record requested was created by a Department or agency other than a constituent unit of the Department of the Treasury or has been classified or otherwise restrictively endorsed by such other Department or agency, and a copy thereof is in the possession of the Internal Revenue Service, such originating or restrictively endorsing Department or agency will be promptly requested to advise the Internal Revenue Service on the releasability of that record. The request for advice will also inform the other Department or agency that, in the absence of timely guidance from it, the Internal Revenue Service will proceed to make its own determination in accordance with this subpart. When it becomes necessary to provide a response to the requester within the time limits set forth in paragraphs (c) (7) and (8) of this section without the advice of the other Department or agency, the Internal Revenue Service will proceed to make its own determination in accordance with this subpart and advise the requester accordingly. However, where as a result, access to the record is denied under one of the exemptions set forth in paragraph (b) of § C01.701 the requester will be advised of the right to appeal such denial and may also be advised to make a request for the record directly to the original Department or agency. When an appeal to the Internal Revenue Service results from such procedure, the originating Department or agency will again be promptly requested to provide timely advice on the releasability of the records. Nevertheless, the ultimate decision on the appeal of such record shall rest with the Internal Revenue Service.

(3) *Form of request.* The initial request for records must—

(i) Be made in writing and signed by the person making the request,

(ii) State that it is made pursuant to the Freedom of Information Act, 5 U.S.C. 552, or regulations thereunder,

(iii) Be addressed to and mailed or hand delivered to the office of the Internal Revenue Service official who is responsible for the control of the records requested (see paragraph (g) of this section for the responsible officials and their addresses), regardless of where such records are maintained. If the person making the request does not know the official responsible for the control of the records being requested, the request should be addressed to and mailed or hand delivered to the office of the director of the Internal Revenue Service district office in the district where the requester resides,

(iv) Reasonably describe the records in accordance with subparagraph (4) (i) of this paragraph,

(v) In the case of a request for records the disclosure of which is limited by

statute or regulations (as, for example, the Privacy Act (5 U.S.C. 552a), sections 6103 and 7213 of the Internal Revenue Code of 1954, or regulations thereunder), establish the identity and the right of the person making the request to the disclosure of the records in accordance with paragraph (c)(4)(ii) of this section.

(vi) Set forth the address where the person making the request desires to be notified of the determination as to whether the request will be granted.

(vii) State whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them, and

(viii) State the firm agreement of the requester to pay the fees for search and duplication ultimately determined in accordance with paragraph (f) of this section, or request that such fees be reduced or waived and state the justification for such request.

Where the initial request, rather than stating a firm agreement to pay the fees ultimately determined in accordance with paragraph (f) of this section, places an upper limit on the amount the requester agrees to pay, which upper limit is deemed likely to be lower than the fees estimated to ultimately be due, or where the requester asks for an estimate of the fees to be charged, the requester shall be promptly advised of the estimate of fees and asked to agree to pay such amount. Where the initial request includes a request for reduction or waiver of fees, the Internal Revenue Service official responsible for the control of the records requested (or his delegate) will determine whether to grant the request for reduction or waiver in accordance with paragraph (f) of this section and notify the requester of his decision and, if such decision results in the requester being liable for all or part of the fees normally due, ask the requester to agree to pay the amount so determined. The requirements of this subparagraph will not be deemed met until the requester has explicitly agreed to pay the fees applicable to his request for records, if any, or has made payment in advance of the fees estimated to be due. In addition, requesters are advised that only requests for records which fully comply with the requirements of this subparagraph can be processed in accordance with this section. The requester will be promptly notified in writing of any requirement which has not been met or any additional requirements to be met. However, every effort will be made to comply with the request as written.

(4) *Reasonable description of records; identity and right of the requester.* (i) (A) The request for records must describe the records in reasonably sufficient detail to enable the Internal Revenue Service employees who are familiar with the subject area of the request to locate the records without placing an unreasonable burden upon the Internal Revenue Service. While no specific formula for a reasonable description of a record can be established, the requirement will generally be satisfied if the requester gives the name, subject matter, and, if known, the date and location of the requested record. However, it is suggested that the person making the request furnish any additional information which will more clearly identify the requested records. Where the request does not reasonably describe the records being sought, the requester shall be afforded an opportunity to refine his request. Such opportunity may, where desirable, involve a conference with knowledgeable Internal Revenue Service personnel. The reasonable description requirement will not be used by officers or employees of the Internal Revenue as a device for improperly withholding records from the public.

(B) The Internal Revenue Service will make every reasonable effort to comply fully with all requests for access to records subject only to any applicable exemption set forth in § 601.701(b). However, in any situation in which it is determined that a request for voluminous records would unduly burden and interfere with the operations of the Internal Revenue Service, the person making the request will be asked to be more specific and to narrow the request, and to agree on an orderly procedure for the production of the requested records, in order to satisfy the request without disproportionate adverse effects on Internal Revenue Service operations.

(ii) In the case of records containing information with respect to a particular person the disclosure of which is limited by statute or regulations, the person making the request shall establish his identity and right to access to such records. A person requesting access to such records which pertain to himself may establish his identity by—

(A) The presentation of a single document bearing a photograph (such as a passport or identification badge), or the presentation of two items of identification which do not bear a photograph but do bear both a name and signature (such as a driver's license or credit card), in the case of a request made in person,

(B) The submission of the requester's signature, address, and one other identifier (such as a photocopy of a driver's license) bearing the requester's signature, in the case of a request made by mail, or

(C) The presentation in person or the submission by mail of a notarized statement swearing to or affirming such person's identity.

Additional proof of a person's identity shall be required before the request will be deemed to have met the requirement of paragraph (c)(3)(v) of this section if it is determined that additional proof is necessary to protect against unauthorized disclosure of information in a particular case. A person who has identified himself to the satisfaction of Internal Revenue Service officials pursuant to this subdivision shall be deemed to have established his right to access to records pertaining to himself. A person requesting records on behalf of or pertaining to another person must provide adequate proof of the legal relationship under which he asserts the right to access to the requested records before the requirement of paragraph (c)(3)(v) of this section will be deemed met. In the case of an attorney-in-fact the requester shall furnish an original of a properly executed power of attorney together with one other identifier bearing the signature of the person executing such power of attorney. A person signing a request for disclosure on behalf of a corporation shall furnish a certification by one of the officers of the corporation (other than the requester) that the person making the request on behalf of the corporation is properly authorized to make such a request. A person requesting access to records of a one-man corporation or a partnership shall provide a notarized statement that the requester is in fact an officer or official of the corporation or a member of the partnership.

(5) *Date of receipt of request.* Requests for records and any separate agreement to pay, final notification of waiver of fees, or letter transmitting prepayment shall be promptly stamped with the date of delivery to or dispatch by the office of the Internal Revenue Service official responsible for the control of the records requested (or his delegate). The latest of such stamped dates will be deemed for purposes of this section to be the date of receipt of the request, provided that the requirements of paragraph (c)(3)(i) through (vii) of this paragraph have been satisfied, and, where applicable—

(i) The requester has agreed in writing, by executing a separate contract or otherwise, to pay the fees for search and duplication determined due in accordance with paragraph (f) of this section, or

(ii) The fees have been waived in accordance with paragraph (f) of this section, or

(iii) Payment in advance has been received from the requester.

As soon as the date of receipt has been established as provided above, the requester shall be informed and advised when he may expect a response within the time limits specified in paragraphs (c)(7) and (8) of this section, unless extended as provided in subparagraph (9) of this paragraph, and the title of the officer responsible for such response.

(6) *Search for records requested.* Upon the receipt of a request, search services will be performed by Internal Revenue Service personnel to identify and locate the requested records. With respect to records maintained in computerized form a search will include services functionally analogous to search for records which are maintained in a conventional form. However, the Internal Revenue Service is not required under 5 U.S.C. 552 to tabulate or compile information for the purpose of creating a record.

(7) *Initial determination*—(i) *In general.* The Chief of the Disclosure Staff or his delegate shall have authority to make initial determinations with respect

to all requests for records of the Internal Revenue Service. With the exception of records which are controlled by the Assistant Commissioner (Inspection), the Director of the Internal Revenue Service Data Center, or the Director of the Office of International Operations, the Chief of the Disclosure Staff or his delegate shall have the sole authority to make such determinations with respect to records controlled by the National Office. Except where the Chief of the Disclosure Staff or his delegate has such sole authority, the initial determination as to whether to grant the request for records may be made either by him or by the Internal Revenue Service official responsible for the control of the records requested or his delegate (see paragraph (c) of this section), including those officials mentioned in the preceding sentence. The initial determination will be made and notification thereof mailed within 10 days (excepting Saturdays, Sundays, and legal public holidays) after the date of receipt of the request, as determined in accordance with paragraph (c)(5) of this section unless an extension is invoked pursuant to paragraph (c)(9)(i) of this section or the requester otherwise agrees to an extension of the 10-day time limitation.

(ii) *Granting of request.* If it is determined that the request is to be granted, and if the person making the request desires a copy of the requested records, a copy of such records will be mailed to him together with a statement of fees at the time of the determination or promptly thereafter, unless prepayment is required pursuant to paragraph (f) of this section. In the case of a request for inspection, the requester will be notified in writing of the determination, when and where the requested records may be inspected and of the fees involved in complying with the request. In such case, the records will promptly be made available for inspection, at the time and place stated, normally at the appropriate office where the records requested are controlled. However, if the person making the request has expressed a desire to inspect the records at another office of the Internal Revenue Service, every reasonable effort will be made to comply with the request. Records will be made available for inspection at such reasonable and proper times as not to interfere with their use by the Internal Revenue Service or to exclude other persons from making inspections. In addition, reasonable limitations may be placed on the number of records which may be inspected by a person on any given date. The person making the request will not be allowed to remove the records from the office where inspection is made. If, after making inspection, the person making the request desires copies of all or a portion of the requested records, copies will be furnished to him upon payment of the established fees prescribed by paragraph (f) of this section.

(iii) *Denial of request.* If it is determined that the request for records should be denied (whether in whole or in part or subject to conditions or exceptions), the person making the request will be so notified by mail. The letter of notification will specify the city or other location where the requested records are situated, contain a brief statement of the grounds for not granting the request in full, set forth the name and title or position of the official responsible for the denial, and advise the person making the request of the right to appeal to the Commissioner in accordance with paragraph (c)(8) of this section.

(iv) *Inability to locate and evaluate within time limits.* Where the records requested cannot be located and evaluated within the initial 10-day period or any extension thereof in accordance with paragraph (c)(9) of this section, the search for the records or evaluation will continue, but the requester will be so notified, advised that he may consider such notification a denial of his request for records, and provided with the address to which an administrative appeal may be delivered. However, the requester may also be invited, in the alternative, to agree to a voluntary extension of time in which to locate and evaluate the records. Such voluntary extension of time will not constitute a waiver of the requester's right to appeal any denial of access ultimately made or his right to appeal in the event of failure to comply with the time extension granted.

(8) *Administrative appeal.* The requester may submit an administrative appeal to the Commissioner at any time within 35 days after the date of any notification described in paragraph (c)(7)(iii) or (iv) of this section, or the date of the letter transmitting the last records released, whichever is later. The letter of appeal shall—

(i) Be made in writing and signed by the requester,

(ii) Be addressed and mailed to the Office of the Commissioner of Internal Revenue; to expedite delivery, requests made by mail should be addressed to—

Freedom of Information Appeal Commissioner of Internal Revenue, c/o Ben Franklin Station, P.O. Box 909, Washington, D.C. 20044, or

if hand delivered, delivery should be made to the Office of the Director, Disclosure Division, Chief Counsel, National Office of the Internal Revenue Service, 1111 Constitution Avenue, Washington, D.C. 20224,

(iii) Reasonably describe the records requested to which the appeal pertains in accordance with paragraph (c)(4)(i) of this paragraph,

(iv) Set forth the address where the appellant desires to be notified of the determination on appeal,

(v) Specify the date of the request, and

(vi) Petition the Commissioner to grant the request for records and state any arguments in support thereof.

Appeals will be promptly stamped with the date of their delivery to the Office of the Director, Disclosure Division, and the later of this stamped date or the stamped date of a document submitted subsequently which supplements the original appeal so that the appeal satisfies the requirements set forth in paragraphs (c)(8)(i) through (vi) of this section will be deemed by the Internal Revenue Service to be the date of their receipt for all purposes of this section. The Commissioner or his delegate will acknowledge receipt of the appeal and advise the requester of the date of receipt and when a response is due in accordance with this paragraph. If an appeal fails to satisfy any of such requirements the person making the request will be promptly advised in writing of the additional requirements to be met. The determination to affirm the initial denial (in whole or in part) or to grant the request for records will be made and notification of the determination mailed within 20 days (exclusive of Saturdays, Sundays, and legal public holidays) after the date of receipt of the appeal unless extended pursuant to paragraph (c)(9)(i) of this section. If it is determined that the appeal from the initial denial is to be denied (in whole or in part), the appellant will be notified in writing of the denial, the reasons therefor, of the name and title or position of the official responsible for the denial on appeal, and of the provisions of 5 U.S.C. 552(a)(4) for judicial review of that determination. If a determination cannot be made within the 20-day period (or extension thereof pursuant to paragraph (c)(9)(i) of this section or by grant of the requester) the requester shall be promptly notified in writing that the determination will be made as soon as practicable but that the requester is nonetheless entitled to commence an action in a district court as provided in paragraph (c)(11) of this section. However, the requester may also be invited, in the alternative, to agree to a voluntary extension of time in which to decide the appeal. Such voluntary extension shall not constitute a waiver of the right of the requester ultimately to commence an action in a United States district court.

(9) *Time extensions*—(i) *10-day extension.* In unusual circumstances, the time limitations specified in subparagraphs (7) and (8) of this paragraph may be extended by written notice from the official charged with the duty of making the determination to the person making the request or appeal setting forth the reasons for such extension and the date on which the determination is expected to be dispatched. Any such extension or extensions of time provided by notice shall not cumulatively total more than 10 working days. If no extension pursuant to this subparagraph is invoked in connection with an initial determination any unused days of the extension may be invoked in connection with the determination on administrative appeal by written notice from the official who is to make the appellate determination to the requester. If no extension is sought for the initial determination, the 10-day extension may be added to the ordinary 20-day period for appellate review. As used in this para-

graph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request, the following:

(A) The need to search for and collect the requested records from field facilities or other establishments in buildings that are separate from that of the office processing the request,

(B) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request, or

(C) The need for consultation, which will be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or with another constituent unit of the Department of the Treasury or among two or more components of the Internal Revenue Service (other than the Disclosure Division of the Office of the Chief Counsel or the Disclosure Staff) having substantial subject-matter interest therein. Consultations with personnel of the Department of Justice, acting in their capacity as legal counsel to the executive departments with respect to requests for records under 5 U.S.C. 552, do not constitute a basis for an extension under this paragraph.

(ii) *Extension by judicial review.* If the Internal Revenue Service fails to comply with the time limitations specified in paragraph (C) (7) or (8) of this section and the person making the request initiates a suit in accordance with paragraph (C) (11) of this section, the court in which the suit was initiated may retain jurisdiction and allow the Internal Revenue Service additional time to review its records, provided that the Internal Revenue Service demonstrates (A) the existence of exceptional circumstances, and (B) the exercise of due diligence in responding to the request.

(10) *Failure to comply.* If the Internal Revenue Service fails to comply with the time limitations specified in paragraph (C) (7), (8), or (9) (i) of this section, any person making a request for records shall be deemed to have exhausted his administrative remedies with respect to such request. Accordingly, the person making the request may initiate suit in accordance with paragraph (C) (11) of this section.

(11) *Judicial review.* If a request for records is denied upon appeal pursuant to paragraph (c) (8) of this section, or if no determination is made within the 10-day or 20-day periods specified in paragraphs (c) (7) and (8) of this section, or the period of any extension pursuant to paragraph (c) (9) (i) of this section or by grant of the requester, respectively, the person making the request may commence an action in a U.S. district court in the district in which he resides, in which his principal place of business is located, in which the records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a) (4). The statute authorizes an action only against the agency. With respect to records of the Internal Revenue Service, the agency is the Internal Revenue Service, not an officer or an employee thereof. Service of process in such an action shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C. App.) applicable to actions against an agency of the United States. Delivery of process upon the Internal Revenue Service must be directed to the Commissioner of Internal Revenue: Attention: CC:GLS, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. The Internal Revenue Service will serve an answer or otherwise plead to any complaint made under this paragraph within 30 days after service upon it, unless the court otherwise directs for good cause shown. Pursuant to 5 U.S.C. 552(a) (4) (D), this proceeding will take precedence on the district court's docket, except as to those cases which the court considers of greater importance, and will be expedited in every way. The district court will determine the matter de novo, and may examine the contents of the Internal Revenue Service records in question in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions described in paragraph (b) (1) of § 601.701. The burden will be upon the Internal Revenue Service to sustain its action in not making the requested records available. The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred by the person making the request in any case in which the complainant has substantially prevailed.

(12) *Proceeding against officer or employee.* Under 5 U.S.C. 552(a) (4) (F), the Civil Service Commission is required, upon the issuance of a specified finding by a court, to initiate a proceeding to determine whether disciplinary action is warranted against an officer or employee of the Internal Revenue Service who was primarily responsible for a withholding of records. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the Commissioner and the Secretary of the Treasury, and shall send copies of the findings and recommendations to the officer or employee or his representative. (See 5 CFR Part 294.1201–1207 (relating to disciplinary actions by the Civil Service Commission).)

(d) *Rules for disclosure of certain specified matters.* * * *

(5) *Information returns of certain tax-exempt organizations and certain trusts.* Information furnished on Form 990, Form 1041–A, and on the annual report by private foundations pursuant to sections 6033, 6034, 6056, and 6058 which are filed after December 31, 1969, is open to public inspection for a 4-year period. This information will be made available for public inspection in the Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, as well as in the office of the district director serving the principal place of business of the organization or of the Director of the Mid-Atlantic Regional Service Center. The applicability of this subparagraph is subject to the rules on disclosure set forth in section 6104(b) and § 301.6104–2 of this chapter.

(6) *Applications of certain organizations for tax exemption.* Subject to the rules on disclosure set forth in section 6104(a) and § 210.6104–1, applications, and certain papers submitted in support of such applications, filed by organizations described in section 501 (c) or (d) and determined to be exempt from taxation under section 501(a) will be made available for public inspection in the Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Copies of such applications filed after September 2, 1958, but not the supporting documents, are open to public inspection in the office of the district director with whom the application was required to be filed.

(7) *Accepted offers in compromise.* For a period of 1 year, a copy of the Abstract and Statement for each accepted offer in compromise in respect of income, profits, capital stock, estate, or gift tax liability will be made available for inspection (i) in the Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, when the offer covers a liability of $5,000 and over, and (ii) in the office of the appropriate district director when the offer covers a liability of less than $5,000. See § 301.6103(a)–1(j) of this chapter and section 10 of Rev. Proc. 64–44 (C.B. 1964–2, 974, 979).

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(10) *Applications with respect to certain deferred compensation plans and accounts.* Applications and papers submitted in support of such applications, filed after September 2, 1974, with respect to the qualification of a pension, profit sharing, or stock bonus plan under section 401(a), 403(a), or 405(a), an individual retirement account described in section 408(a), an individual retirement annuity described in section 408(b), or with respect to the exemption from tax of an organization forming part of such a plan or account, and any documents issued by the Internal Revenue Service dealing with such qualification or exemption, are open to public inspection. Such material will be made available for public inspection in the Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, as well as in the office of any district director regardless of where the applications are filed. This subparagraph shall not apply with respect to plans having not more than 25 plan participants and its applicability is subject to the rules set forth in section 6104(a) and § 301.6104–1 of this chapter.

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(f) *Fees for services.*—(1) *In general.* The fees to be charged for search and duplication services performed by the Internal Revenue Service, whether or not such services are performed pursuant to the Freedom of Information Act or the regulations thereunder, shall be

determined and collected in accordance with the provisions of this paragraph. A fee shall not be charged for determining whether an exemption under § 601.701 (b) (1) of this section can or should be asserted, deleting exempt matter being withheld from records to be furnished, or monitoring a requester's inspection of records which contains exempt matter. Should services other than the services described in this paragraph be requested and rendered, appropriate fees will be established by the Commissioner or his delegate, and imposed and collected pursuant to 31 U.S.C. 483(a), subject, however, to the constraint imposed by 5 U.S.C. 552(a) (4) (A).

(2) *Waiver or reduction of fees.* The fees authorized by this paragraph may be waived or reduced—

(i) At the discretion of any Internal Revenue Service official (A) who is authorized to make the initial determination pursuant to paragraph (c) (7) of this section, in the case of a record which is not located for any person, or (B) who determines any portion of the requested record to be exempt from disclosure; or

(ii) On a case-by-case basis in accordance with this subdivision by any Internal Revenue Service official who is authorized to make the initial determination pursuant to paragraph (c) (7) of this section, provided such waiver or reduction has been requested in writing. Fees will be waived or reduced by such official when he determines either that:

(A) The records are requested by, or on behalf of, an individual who demonstrates in writing under penalty of perjury to the satisfaction of the deciding official that he is indigent and compliance with the request does not constitute an unreasonable burden on the Internal Revenue Service (to demonstrate indigency an individual shall show that he is eligible for Federally aided public assistance designed to supplement income on the basis of financial need, e.g., food stamp program); or

(B) A waiver or reduction of the fees is in the public interest because furnishing the information primarily benefits the general public. Normally, no charge will be made for providing records to Federal, state or foreign governments, international governmental organizations, or local governmental agencies of offices thereof.

The initial request for waiver of fees should be addressed to the official of the Internal Revenue Service to whose office the request for disclosure is delivered pursuant to paragraph (c) (3) (iii) of this section. Appeals from denials of requests for waiver or reduction of fees shall be decided by the Commissioner in accordance with the criteria set forth in this subdivision. Appeals shall be addressed in writing to the Office of the Commissioner within 35 days of the denial of the initial request for waiver or reduction and shall be decided promptly. See paragraph (c) (6) of this section for the appropriate address.

(3) *Search services.* Fees charged for the search services—

(i) Of personnel involved in locating records shall be $3.50 for each hour or fraction thereof;

(ii) Of a computer to retrieve records stored by computer shall be $3.50 for each hour (or fraction thereof) of personnel time associated with the search plus an amount which reflects the actual costs of extracting the stored information in the format in which it is normally produced, based on computer time and supplies necessary to comply with the request; and

(iii) In a case in which it is necessary to transport records from one location to another, or to transport an employee to the site of the requested records to locate rather than examine the records, shall be at the rate of the actual cost of such shipping or transportation.

(4) *Duplication.* The fee for duplication of materials shall be as follows:

(i) Photocopies, per page up to 8½" x 14"—$.10 each.

(ii) Photographs, films and other materials—actual cost.

(iii) In a case in which the Internal Revenue Service finds it appropriate to furnish the records to be released to a private contractor for copying, the person making the request for such records will be charged the actual cost of duplication charged by the private contractor.

(iv) No fee will be charged where the person making the request furnishes the supplies and equipment and makes the copies at the government location.

(5) *Printed material.* Unpriced printed material which is available at the location where requested and which does not require duplication in order that copies may be furnished, will be provided at the rate of $.25 for each twenty-five pages or any fraction thereof. Forms and instructions which may be available in the reading rooms for distribution are not subject to this price. Certain relevant government publications which will be placed on the shelves of the reading rooms and similar public inspection facilities will not be sold at these locations. However, copies of pages of these publications may be duplicated on the premises and a fee for such services will be charged in accordance with paragraph (f) (4) of this section. A person desiring to purchase the complete publication, for example, an Internal Revenue Bulletin, should contact the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(6) *Agreement to pay.* In order to protect the requester from unexpected fees, all requests for records shall state the agreement of the requester (pursuant to paragraph (c) (3) (viii) of this section) to pay the fees determined in accordance with this paragraph or state the amount which the requester has set as an acceptable upper limit he is willing to pay to cover such fees. When such fees are estimated by the Internal Revenue Service to exceed that limit, or when the requester has failed to state a limit and the costs are estimated to exceed $50 and the Internal Revenue Service has not then determined to waive or reduce the fees, a notice will be sent to the requester. This notice will:

(i) Inform the requester of the estimated costs;

(ii) Extend an offer to the requester to confer with Internal Revenue Service personnel in an attempt to reformulate the request in a manner which will reduce the fees and still meet the needs of the requester;

(iii) Ask that the requester enter into a contract for the payment of actual costs determined in accordance with this subparagraph, which contract may provide for prepayment of the estimated costs in whole or in part; and

(iv) Inform the requester that the running of the time period, within which the Internal Revenue Service is obliged to make a determination on the request, has been tolled pending a reformulation of the request or the receipt of advance payment or an agreement from the requester to bear the estimated costs.

(7) *Form of payment.* Payment shall be made by check or money order, payable to the order of the Treasury of the United States or the Internal Revenue Service.

(g) *Responsible officials and their addresses.* For purposes of this section, the Internal Revenue Service officials responsible for the control of records are the following officials, in the case of records under their jurisdiction: the Assistant Commissioner (Inspection), Regional Commissioners, District Directors, Service Center Directors, the Director of the Office of International Operations, the Director of the Internal Revenue Service Data Center. In the case of records of the National Office not under the jurisdiction of one of the officials referred to in the preceding sentence (including records of the National Office of the Chief Counsel), the Chief of the Disclosure Staff is the responsible official. Records of a Regional Counsel's Office shall be deemed to be under the jurisdiction of the Regional Commissioner, but records of district offices and service centers shall not be so deemed. The addresses of these officials are as follows:

NATIONAL OFFICE

Mailing address

Chief, Disclosure Staff
National Office of the Internal Revenue Service
Freedom of Information Request
c/o Ben Franklin Station
P.O. Box 388
Washington, D.C. 20044

Walk-in address

1111 Constitution Avenue, N.W.
Washington, D.C.

Mailing address

Assistant Commissioner (Inspection)
National Office of the Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Walk-in address

Same as mailing address

Mailing address
Director, Office of International Operations
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
1325 K Street, N.W.
Washington, D.C. 20225

Walk-in address
Same as mailing address

Mailing address
Director, IRS Data Center
Attn: Disclosure Officer
Internal Revenue Service
Freedom of Information Request
1300 John C. Lodge Fwy.
Detroit, Michigan 48226

Walk-in address
Same as mailing address

NORTH ATLANTIC REGION

REGIONAL OFFICE

Mailing address
Regional Commissioner, North Atlantic Region
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
90 Church Street
New York, New York 10007

Walk-in address
Same as mailing address

ALBANY DISTRICT

Mailing address
Director, Albany District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
Leo W. O'Brien Federal Office Building
Clinton Avenue & North Pearl Street
Albany, New York 12207

Walk-in address
Same as mailing address

AUGUSTA DISTRICT

Mailing address
Director, Augusta District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
68 Sewall Street
Augusta, Maine 04330

Walk-in address
Same as mailing address

BOSTON DISTRICT

Mailing address
Director, Boston District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
John F. Kennedy Federal Building
Boston, Massachusetts 02203

Walk-in address
Same as mailing address

BROOKLYN DISTRICT

Mailing address
Director, Brooklyn District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
35 Tillary Street
Brooklyn, New York 11201

Walk-in address
Same as mailing address

BUFFALO DISTRICT

Mailing address
Director, Buffalo District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
111 West Huron Street
Buffalo, New York 14202

Walk-in address
Same as mailing address

BURLINGTON DISTRICT

Mailing address
Director, Burlington District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
11 Elwood Avenue
Burlington, Vermont 05401

Walk-in address
Same as mailing address

HARTFORD DISTRICT

Mailing address
Director, Hartford District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
450 Main Street
Hartford, Connecticut 06103

Walk-in address
Same as mailing address

MANHATTAN DISTRICT

Mailing address
Director, Manhattan District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
120 Church Street
New York, New York 10007

Walk-in address
Same as mailing address

PORTSMOUTH DISTRICT

Mailing address
Director, Portsmouth District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
Federal Building
80 Daniel Street
Portsmouth, New Hampshire 03801

Walk-in address
Same as mailing address

PROVIDENCE DISTRICT

Mailing address
Director, Providence District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
130 Broadway
Providence, Rhode Island 02903

Walk-in address
Same as mailing address

ANDOVER SERVICE CENTER

Mailing address
Director, Andover Service Center
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
310 Lowell Street
Andover, Massachusetts 01812

Walk-in address
Same as mailing address

BROOKHAVEN SERVICE CENTER

Mailing address
Director, Brookhaven Service Center
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
1040 Waverly Avenue
Holtsville, New York 11742

Walk-in address
Same as mailing address

MID-ATLANTIC REGION

REGIONAL OFFICE

Mailing address
Regional Commissioner, Mid-Atlantic Region
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
2 Penn Center Plaza
Philadelphia, Pennsylvania 19102

Walk-in address
Same as mailing address

BALTIMORE DISTRICT

Mailing address
Director, Baltimore District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 1018
Baltimore, Maryland 21203

Walk-in address
Federal Office Building
31 Hopkins Plaza
Baltimore, Maryland

NEWARK DISTRICT

Mailing address
Director, Newark District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 270
Newark, New Jersey 07101

Walk-in address
Federal Building
970 Broad Street
Newark, New Jersey

PHILADELPHIA DISTRICT

Mailing address
Director, Philadelphia District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 12998
Philadelphia, Pennsylvania 19108

Walk-in address
5th Floor, Federal Office Building
600 Arch Street
Philadelphia, Pennsylvania

PITTSBURGH DISTRICT

Mailing address
Director, Pittsburgh District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 2488
Pittsburgh, Pennsylvania 15230

Walk-in address
Federal Building
1000 Liberty Avenue
Pittsburgh, Pennsylvania

RICHMOND DISTRICT

Mailing address
Director, Richmond District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 10007
Richmond, Virginia 23240

Walk-in address
Federal Building
400 North Eighth Street
Richmond, Virginia

WILMINGTON DISTRICT

Mailing address
Director, Wilmington District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 1205
Wilmington, Delaware 19899

Walk-in address
Second Floor
844 King Street
Wilmington, Delaware

PHILADELPHIA SERVICE CENTER

Mailing address
Director, Philadelphia Service Center
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 69
Cornwells Heights, Pennsylvania 19020

Walk-in address
11601 Roosevelt Boulevard
Philadelphia, Pennsylvania

SOUTHEAST REGION

REGIONAL OFFICE

Mailing address
Regional Commissioner, Southeast Region
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 926
Atlanta, Georgia 30301

Mailing address
275 Peachtree Street, N.E.
Atlanta, Georgia

ATLANTA DISTRICT

Mailing address
Director, Atalnta District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 737
Atlanta, Georgia 30301

Walk-in address
275 Peachtree Street, N.E.
Atlanta, Georgia

BIRMINGHAM DISTRICT

Mailing address
Director, Birmingham District Office
Internal Revenue Service
Freedom of Information Request
Attn: Disclosure Officer
P.O. Box 715
Birmingham, Alabama 35201

Walk-in address
2121 Eighth Avenue, North
Birmingham, Alabama

COLUMBIA DISTRICT

Mailing address
Director, Columbia District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 407
Columbia, South Carolina 29202

Walk-in address
Federal Office Building
901 Sumter Street
Columbia, South Carolina

GREENSBORO DISTRICT

Mailing address
Director, Greensboro District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 20541
Greensboro, North Carolina 27402

Walk-in address
Federal Building
320 Federal Place
Greensboro, North Carolina

JACKSON DISTRICT

Mailing address
Director, Jackson District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 370
Jackson, Mississippi 39205

Walk-in address
301 Building
301 North Lamar Street
Jackson, Mississippi

JACKSONVILLE DISTRICT

Mailing address
Director, Jacksonville District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 35010
Jacksonville, Florida 32202

Walk-in address
Federal Office Building
400 West Bay Street
Jacksonville, Florida

NASHVILLE DISTRICT

Mailing address
Director, Nashville District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 1107
Nashville, Tennessee 37202

Walk-in address
U.S. Courthouse
801 Broadway
Nashville, Tennessee

ATLANTA SERVICE CENTER

Mailing address
Director, Atlanta Service Center
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
4800 Buford Highway
Chamblee, Georgia 30341

Walk-in address
Same as mailing address

MEMPHIS SERVICE CENTER

Mailing address
Director, Memphis Service Center
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
3131 Democrat Road, Stop 16A
Memphis, Tennessee 38110

Walk-in address
Same as mailing address

MIDWEST REGION

REGIONAL OFFICE

Mailing address
Regional Commissioner, Midwest Region
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
One North Wacker Drive
10th Floor
Chicago, Illinois 60606

Walk-in address
Same as mailing address

ABERDEEN DISTRICT

Mailing address
Director, Aberdeen District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 370
Aberdeen, South Dakota 57401

Walk-in address
Federal Building
1154 Fourth Avenue, S.E.
Aberdeen, South Dakota

CHICAGO DISTRICT

Mailing address
Director, Chicago District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 782
Chicago, Illinois 60690

Walk-in address
230 S. Dearborn Street
Chicago, Illinois

DES MOINES DISTRICT

Mailing address
Director, Des Moines District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 327
Des Moines, Iowa 50302

Walk-in address
Federal Building
210 Walnut Street
Des Moines, Iowa

FARGO DISTRICT

Mailing address
Director, Fargo District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 503
Fargo, North Dakota 58102

Walk-in address
653 Second Avenue, North
Fargo, North Dakota

MILWAUKEE DISTRICT

Mailing address
Director, Milwaukee District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 1187
Milwaukee, Wisconsin 53201

Walk-in address
Federal Building & Courthouse
517 E. Wisconsin Avenue
Milwaukee, Wisconsin

OMAHA DISTRICT

Mailing address
Director, Omaha District Office

Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 1052
Omaha, Nebraska 68101

Walk-in address

Federal Office Building
15th & Dodge Streets
Omaha, Nebraska

ST. LOUIS DISTRICT

Mailing address

Director, St. Louis District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 1548
St. Louis, Missouri 63188

Walk-in address

U.S. Court & Custom House
1114 Market Street
St. Louis, Missouri

ST. PAUL DISTRICT

Mailing address

Director, St. Paul District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 2556
St. Paul, Minnesota 55165

Walk-in address

316 N. Robert Street
St. Paul, Minnesota

SPRINGFIELD DISTRICT

Mailing address

Director, Springfield District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 5063
Springfield, Illinois 62705

Walk-in address

325 W. Adams Street
Springfield, Illinois

KANSAS CITY SERVICE CENTER

Mailing address

Director, Kansas City Service Center
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 8321
Kansas City, Missouri 64131

Walk-in address

2306 E. Bannister Road
Kansas City, Missouri

CENTRAL REGION

REGIONAL OFFICE

Mailing address

Regional Commissioner, Central Region
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
Federal Office Building
550 Main Street
Cincinnati, Ohio 45202

Walk-in address

Same as mailing address

CINCINNATI DISTRICT

Mailing address

Director, Cincinnati District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 476
Cincinnati, Ohio 45201

Walk-in address

Federal Office Building
550 Main Street
Cincinnati, Ohio

CLEVELAND DISTRICT

Mailing address

Director, Cleveland District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 99182
Cleveland, Ohio 44199

Walk-in address

Federal Office Building
1240 E. 9th Street
Cleveland, Ohio

DETROIT DISTRICT

Mailing address

Director, Detroit District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 84
Detroit, Michigan 48224

Walk-in address

(Through May 7, 1976) Federal Building, 231 W. Lafayette Street, Detroit, Michigan.
(After May 7, 1976) Federal Office Building, 477 Michigan Avenue, Detroit, Michigan.

INDIANAPOLIS DISTRICT

Mailing address

Director, Indianapolis District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 44242
Indianapolis, Indiana 46244

Walk-in address

Federal Office Building
575 N. Pennsylvania Street
Indianapolis, Indiana

LOUISVILLE DISTRICT

Mailing address

Director, Louisville District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 1735
Louisville, Kentucky 40201

Walk-in address

Third Floor, Post Office Building
Seventh and Broadway
Louisville, Kentucky

PARKERSBURG DISTRICT

Mailing address

Director, Parkersburg District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
425 Juliana Street
Parkersburg, West Virginia 26101

Walk-in address

Same as mailing address

CINCINNATI SERVICE CENTER

Mailing address

Director, Cincinnati Service Center
Internal Revenue Service
Attn: Disclosure Officer, Stop 64
Freedom of Information Request
P.O. Box 257
Covington, Kentucky 41012

Walk-in address

Cincinnati Service Center
200 West Fourth Street
Covington, Kentucky

SOUTHWEST REGION

REGIONAL OFFICE

Mailing address

Regional Commissioner, Southwest Region
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 5781
Dallas, Texas 75222

Walk-in address

7839 Churchill Way
Dallas, Texas

ALBUQUERQUE DISTRICT

Mailing address

Director, Albuquerque District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 1967
Albuquerque, New Mexico 87103

Walk-in address

517 Gold Avenue, S.W.
Albuquerque, New Mexico

AUSTIN DISTRICT

Mailing address

Director, Austin District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 1448
Austin, Texas 78767

Walk-in address

300 East Eighth Street
Austin, Texas

CHEYENNE DISTRICT

Mailing address

Director, Cheyenne District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 1822
Cheyenne, Wyoming 82001

Walk-in address

21st & Carey Avenue
Cheyenne, Wyoming

DALLAS DISTRICT

Mailing address

Director, Dallas District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
1100 Commerce Street
Dallas, Texas 75202

Walk-in address

Same as mailing address

DENVER DISTRICT

Mailing address

Director, Denver District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 1378
Denver, Colorado 80201

Walk-in address

1050 17th Street
Denver, Colorado

LITTLE ROCK

Mailing address

Director, Little Rock District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 3778
Little Rock, Arkansas 72203

Walk-in address
700 W. Capitol
Little Rock, Arkansas

NEW ORLEANS DISTRICT

Mailing address
Director, New Orleans District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 30350
New Orleans, Louisiana 70190

Walk-in address
600 South Street
New Orleans, Louisiana

OKLAHOMA CITY DISTRICT

Mailing address
Director, Oklahoma City District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 60
Oklahoma City, Oklahoma 73101

Walk-in address
200 N.W. 4th Street
Oklahoma City, Oklahoma

WICHITA DISTRICT

Mailing address
Director, Wichita District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 400
Wichita, Kansas 67201

Walk-in address
422 South Main Street
Wichita, Kansas

AUSTIN SERVICE CENTER

Mailing address
Director, Austin Service Center
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 934
Austin, Texas 78767

Walk-in address
8651 S. Interregional Highway
Austin, Texas

WESTERN REGION

REGIONAL OFFICE

Mailing address
Regional Commissioner, Western Region
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
525 Market Street
San Francisco, California 94105

Walk-in address
Same as mailing address

ANCHORAGE DISTRICT

Mailing address
Director, Anchorage District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 1500
Anchorage, Alaska 99510

Walk-in address
310 K Street
Anchorage, Alaska

BOISE DISTRICT

Mailing address
Director, Boise District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 041
550 West Fort Street
Boise, Idaho 83724

Walk-in address
Same as mailing address

HELENA DISTRICT

Mailing address
Director, Helena District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
Federal Building, Second Floor West
Helena, Montana 59601

Walk-in address
Same as mailing address

HONOLULU DISTRICT

Mailing address
Director, Honolulu District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 2810
Honolulu, Hawaii 96803

Walk-in address
835 Merchant Street
Honolulu, Hawaii

LOS ANGELES DISTRICT

Mailing address
Director, Los Angeles District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 231
Los Angeles, California 90053

Walk-in address
300 N. Los Angeles Street
Los Angeles, California

PHOENIX DISTRICT

Mailing address
Director, Phoenix District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 2350
Phoenix, Arizona 85002

Walk-in address
Federal Building
230 N. 1st Avenue
Phoenix, Arizona

PORTLAND DISTRICT

Mailing address
Director, Portland District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 4185
Portland, Oregon 97208

Walk-in address
1220 S.W. 3rd Avenue
Portland, Oregon

RENO DISTRICT

Mailing address
Director, Reno District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 4100
Reno, Nevada 89505

Walk-in address
Federal Building
300 Booth Street
Reno, Nevada

SALT LAKE CITY DISTRICT

Mailing address
Director, Salt Lake City District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 2069
Salt Lake City, Utah 84110

Walk-in address
465 South 400 East
Salt Lake City, Utah

SAN FRANCISCO DISTRICT

Mailing address
Director, San Francisco District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 36020
San Francisco, California 94102

Walk-in address
450 Golden Gate Avenue
San Francisco, California

SEATTLE DISTRICT

Mailing address
Director, Seattle District Office
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
915 Second Avenue
Seattle, Washington 98104

Walk-in address
Same as mailing address

FRESNO SERVICE CENTER

Mailing address
Director, Fresno Service Center
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
Stop 630
P.O. Box 12866
Fresno, California 93779

Walk-in address
5045 E. Butler Avenue
Fresno, California

OGDEN SERVICE CENTER

Mailing address
Director, Ogden Service Center
Internal Revenue Service
Attn: Disclosure Officer
Freedom of Information Request
P.O. Box 9948
Ogden, Utah 84409

Walk-in address
1160 West 1200 South Street
Ogden, Utah

DONALD C. ALEXANDER,
Commissioner.

[FR Doc.76-14103 Filed 5-13-76;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 556-3]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Florida: Southeast Florida SO_2 Standards

On May 31, 1972 (37 FR 10842), the Administrator approved the Florida plan to attain and maintain the national ambient air quality standards in that State. The ambient sulfur dioxide standards set for most of the State in the original Florida plan were identical to the

APPENDIX 3.—MATERIALS RELATING TO NOTICE SENT BY INTERNAL REVENUE SERVICE TO INDIVIDUALS AND ORGANIZATIONS NAMED IN SPECIAL SERVICE STAFF FILES

Department of the Treasury / **Internal Revenue Service** / Washington, D.C. 20224

Commissioner

SEP 7 1976

Honorable Bella Abzug
Chairwoman, Government Information
and Individual Rights Subcommittee
Committee on Government Operations
1507 Longworth Office Building
Washington, D. C. 20515

Dear Mrs. Abzug:

In your letter of June 28, 1976, you asked to be kept informed of our progress regarding notification of the individuals and organizations on whom field referrals were made by the Special Service Staff.

On July 23, 1976, 731 letters to the individuals and organizations mentioned above were mailed (See Enclosure A for the breakdown of the mailout's results as of August 30, 1976). All the letters were sent certified mail, return receipt requested. A copy of Internal Revenue Service Fact Sheet 76-4, dated July, 1976, which was sent to IRS field offices, along with a copy of the notification letter and the reply correspondence are labeled respectively Enclosures B, C and D.

We will continue to inform you of any significant developments.

With kind regards,

Sincerely,

Commissioner

Enclosures

ENCLOSURE A

Mailout Regarding Former Special Service Staff File

Letters sent *	-	731

Results of Mailing as of August 30, 1976

Undeliverable	-	335
Taxpayer Accepted Delivery	-	370
Taxpayer Refused Delivery	-	3
No Evidence of Delivery to Date	-	23
TOTAL	-	731
Request for Information Received	-	293

* No letters sent in 20 instances where Intelligence investigation or litigation pending or where previous request received from taxpayers.

ENCLOSURE B

Internal Revenue Service
Public Affairs Division

Fact Sheet 76-4
July, 1976

SPECIAL SERVICE STAFF FILE

At a hearing before the Government Information and Individual Rights Subcommittee of the Committee on Government Operations on May 11, 1976, Chairwoman Bella Abzug requested that the Internal Revenue Service advise all individuals and organizations on whom files were maintained by the former Special Service Staff.

Since that hearing, the IRS has adopted a procedure whereby it will notify such individuals and organizations with respect to whom referrals were made by the Special Service Staff to IRS field offices.

The IRS will, about July 23, 1976, notify by mail approximately 500 individuals and 250 organizations. The notification contains a letter of explanation and a special form which may be completed and returned to the IRS if the individual or organization wishes to see copies of the records pertaining to them.

Though the Special Service Staff was ordered abolished on August 9, 1973, by Commissioner of Internal Revenue Donald C. Alexander less than three months after he took office, the files of the organization currently are being retained by the IRS at the request of Congress.

A copy of the notification letter and the special form are attached.

X X X

ENCLOSURE C

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact: Mr. M. Farbenblum

Telephone Number: (202) 964-6514

Refer Reply to:

Date:

During the period July 2, 1969 through August 9, 1973, an organizational component known as the Special Service Staff existed within the Internal Revenue Service. Shortly after assuming office, Commissioner Donald C. Alexander ordered the abolishment of the Staff. Although this order was given on August 9, 1973, the files of this organization are currently being retained by the Service at the request of the Congress of the United States.

We have reviewed the Special Service Staff files and determined that they contain material relating to you or your organization. In addition, on the basis of the material in these files, a referral was made with respect to you, your spouse, or your organization to a field office for evaluation or investigation of matters relating to your tax status under the laws of the United States.

This letter is to notify you that under applicable statutes you may have access to the files of the former Special Service Staff as they pertain to you or your organization. However, in accordance with those statutes, limited portions of the records may not be available to you. Disclosure laws specifically exclude data such as that which would identify confidential sources; tax information related to third parties; that which would constitute an invasion of privacy; and records generated by another agency from which permission to disclose has not been received.

If you desire access to these records, please complete and return the enclosed form letter. We have enclosed a self-addressed postage paid envelope for your convenience. If we do not receive a reply from you within sixty days from the date of this letter, we will assume you do not wish to see the file.

Sincerely,

Acting Director, Disclosure
Operations Division

Enclosures:
As Stated

Form IS 6335 (1-70)

ENCLOSURE D

.01)
...rtment of the Treasury
...nternal Revenue Service

Request for Special Service Staff Files

To: Director
Disclosure Operations Division
P.O. Box 388
Ben Franklin Station
Washington, DC 20044

From: [ ]

(Please check appropriate box below)

Yes ☐ No ☐ Send copies of records from the former Special Service Staff files pertaining to the above file to me at the address indicated below.

Signature and Address of or for Requester

If signed by or on behalf of an organization, I certify that I have the authority to execute this form on behalf of such organization.

(Signature) *(Title, if applicable)* *(Date)*

(Street Address)

(City) *(State)* *(ZIP Code)*

Form 5665 (7-76)

NINETY-FOURTH CONGRESS

Congress of the United States

House of Representatives

GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C
WASHINGTON, D.C. 20515

June 28, 1976

Hon. Donald C. Alexander
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Dear Commissioner Alexander:

Thank you for your letter of June 28, 1976 regarding notification to approximately 775 individuals and organizations on whom field referrals were made by the Special Service Staff of IRS.

As you know, it is my view that all individuals and organizations included in the SSS program should be notified. As a first step, however, I am pleased that IRS will institute this limited notification program. As a next step, I suggest that notice be given to all individuals and organizations about whom a substantial file, including reports from the FBI and/or local police authorities, was maintained. I will continue to press for legislation to require that IRS and other agencies notify all who were subjected to wrongful surveillance.

Your letter states that certain organizations may no longer be in existence and consequently notification may not be possible. Many of the organizations on the SSS list were "peace" groups, and would probably have gone out of existence when the war in Vietnam ended. I would suggest, however, that the leaders of these groups be given notice that the organization was the subject of an SSS file. As you know, the files in the cases of some of these peace organizations were quite extensive and contained a good deal of information on individuals. I would think that the individual leaders and members of these organizations would have an interest in knowing about these files.

Although your letter does not specifically state, I assume that once individuals are notified under your program that the SSS maintained files on them, that subsequent requests for access to those files by the affected individuals will be treated as ordinary Freedom of Information Act and Privacy Act requests. I assume also that the Privacy Act of 1974 will be interpreted by IRS, as it has been by other agencies, to allow an individual requesting his or her file to have the option of correcting inaccurate statements or having destroyed portions of files maintained in violation of that Act.

You also state that IRS wishes to proceed with the destruction of their remaining files after the notification process has been completed. As you know, I have requested all agencies whose files come within the perview of H.R. 12039 to refrain from destruction of these files until at least such time as Congress has had an opportunity to act on that and similar legislation. As you also may know, the moratorium on destruction of files and records, which had been imposed during the Church and Pike investigations, has been extended by the Senate leadership for six months. I believe that the moratorium covers the SSS files.

Please keep me informed of your progress in giving notice as outlined in your letter of June 28.

With best wishes,

Sincerely,

Bella S. Abzug

BELLA S. ABZUG
Chairwoman

Department of the Treasury / **Internal Revenue Service** / Washington, D.C. 20224

Commissioner

JUN 28 1976

Honorable Bella Abzug
Chairwoman, Government Information and
Individual Rights Subcommittee
Committee on Government Operations
1507 Longworth Office Building
Washington, D. C. 20515

Dear Mrs. Abzug:

At the hearing on May 11, 1976, the Subcommittee recommended that the Internal Revenue Service consider advising tax entities of their presence on the files established by the former Special Service Staff (SSS). We have reviewed the files and conclude it is possible to issue notification to most of the approximately 775 individuals and organizations on whom field referrals were made by the SSS. Although we have extensively researched our files for current addresses, in some cases we will have to issue notification to the last known address. Also, as there may be individuals who are deceased or organizations which are no longer in existence, we may not be able to effect notification to all of the approximately 775 entities.

The individuals and organizations notified will be advised that data in the files will be made available to them if requested. The exception to this is that we do not plan to contact those entities who have previously reviewed their files, or those where an intelligence case or litigation is currently in process or pending. Upon receipt of the request, access will be granted except for the following types of information: data which would identify confidential sources; information pertaining to third parties if the release of such information would constitute an unwarranted invasion of the privacy of the third parties; tax information pertaining to third parties; and privileged or confidential trade secrets and commercial or financial information of third parties. Additionally, release of records generated by other agencies will be cleared with the originating agency to determine the extent to which disclosure is permissible. The conclusions reached with respect to other agency documents will be forwarded along with our response to a request for access to such records.

If, during our attempt to secure current names and addresses from our Master Files, we find a situation where there is evidence of tax fraud, malfeasance, collusion, concealment or misrepresentation of a material fact; or other circumstances exist which indicate that our failure to investigate would be a serious administrative omission, we will follow-up on those situations. This action is not directed at any entity because of his or her (or organizational) presence on an SSS file; rather, the Service would be negligent in not pursuing resolution of an apparent tax violation when such information is available.

So far as the balance of the approximately 10,500 SSS files are concerned, there is no systemic linkage between these files and taxpayer information carried on the IRS Master Files. Many of the SSS files lack positive identification of the taxpayers involved (i.e., the address information is incomplete or out of date and there is no taxpayer identification number). Also, many of the individuals in the SSS files have relatively common names. There may be hundreds, and in a few cases, thousands of taxpayers with similar names carried on the IRS Master Files. Without an identification number or complete address information, positive identification of these individuals would be extremely difficult or, in some instances, impossible. We believe undue concern may result through notification to the wrong entities that files were established in their names. There is a serious risk of improper notification because of difficulties in identification.

If you agree with this approach, we will notify the approximately 775 individuals and organizations within the next sixty days. This notification process will be closely controlled, and the results will be made available to you. Since the SSS files have been completely inactive for a period of approximately three years and serve no useful purpose, we wish to proceed with their destruction after this notification process has been completed. The only exception would be those cases, if any, which may be involved in litigation.

We trust these positive steps will satisfy the Subcommittee's request, which was outlined in your letter of May 17, 1976, for information concerning cases referred by the SSS to the field.

With kind regards,

Sincerely,

Commissioner

MAY 28 1975

The Honorable John V. Tunney
Chairman, Subcommittee on
Constitutional Rights
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is in reply to your letter of May 13, 1975, suggesting that the Internal Revenue Service notify the individuals and organizations contained in the Special Service Staff files of the fact that they were so contained.

I agree completely that it is necessary and appropriate to protect the privacy of those people and organizations and avoid stigmatizing them publicly.

As you know, the Internal Revenue Service will respond to inquiries from individuals or organizations and inform them whether their name is in the Staff files. However, I do not think that it would be appropriate for the IRS to undertake the task of notifying the individuals or organizations named in those files that they are so named.

In the first place, because the Staff was ordered abolished by me on August 9, 1973, and because the files are not being used at all, except as necessary to cooperate with the various Congressional committees that are investigating the IRS, I do not believe that any significant useful purpose would be served by such a wholesale notification.

Secondly, I think that such a notification program could be easily misunderstood and might well be counter-productive, at a time when the Internal Revenue Service

is trying to ensure that it is, in fact, and is perceived by the general public to be an agency that administers the tax laws in an impartial and even-handed manner, totally without regard to such things as ideological orientation.

As you may know, the Staff of the Joint Committee on Internal Revenue Taxation has, for the past several months, been conducting an intensive investigation of the activities of the Staff. When their report is complete and made public, I am hopeful that the American public will be provided with a complete explanation of the Special Service Staff, one that will permit the closing of an unfortunate episode in the history of the Internal Revenue Service.

With kind regards,

Sincerely,

/s/ Donald C. Alexander

Donald C. Alexander

PRIVACY -- General -- Alexander

May 13, 1975

Honorable Donald C. Alexander
Commissioner, Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D. C. 20224

Dear Commissioner:

Last year you transmitted to the Subcommittee on Constitutional Rights an alphabetical list of the names of persons and organizations contained in the files of the Special Service Staff. As you may recall, the list provided to us did not have accompanying addresses.

I have since heard from a number of persons who apparently have reason to believe that they are on the list. Generally, they simply want to know whether or not they are indeed on the list. I assume that your office is being burdened by similar requests, and I was pleased to learn that your office is telling individuals who ask whether they are on the list. Yet, there are some people who fear that they are on the list but are reluctant to ask because they are worried that an inquiry along these lines might place them on yet another list that might trigger I.R.S. interest, however groundless that worry may be.

In light of the above and in the interest of removing all doubts, I suggest that you notify within the next month, all the people and organizations on the list of the fact that their names were included in the Special Service Staff files. By so doing, you will protect the privacy of these people and organizationsand avoid stigmatizing them publicly. I also suggest that you send out a press release indicating that notification is in process. Thus, the people and organizations who do not receive a letter of notification will know with certainty that they were not in the files.

Sincerely,

JOHN V. TUNNEY
Chairman, Subcommittee on
Constitutional Rights

JVT/did

N.Y. Times

700 to Be Told of Special Tax Inquiries

By JOHN M. CREWDSON
Special to The New York Times

WASHINGTON, June 29—The Internal Revenue Service has agreed to notify more than 700 taxpayers that they were among those singled out during the Nixon Administration for special attention because of their political ideologies.

In a letter delivered yesterday to Representative Bella S. Abzug, Democrat of Manhattan, the service's Commissioner, Donald C. Alexander, said that the notifications would be sent to 775 persons whose cases the service's defunct Special Service Staff had referred to field offices for some sort of action.

Mrs. Abzug, who heads the House Government Operations Committee's Subcommittee on Government Information and Individual Rights, replied in a letter to Mr. Alexander that although she was "pleased that the I.R.S. will institute this limited notification program," she would continue to press for notification of all 11,000 taxpayers and groups on whom the special staff maintained files.

In his letter, Mr. Alexander noted that the notifications were being sent pursuant to a request from the Abzug subcommittee, and he said that those notified would be able, with some expectations, to obtain the information in their files for the asking.

The selective enforcement of Federal tax laws, which the Senate Select Committee on Intelligence on Activities has traced back to the Kennedy Administration, reached its zenith under President Nixon, when the Special Service was set up.

That unit, which from 1969 to 1973 collected information from other Federal agencies not only about tax resisters but on various groups who opposed the Nixon Administration, including several opposed to the Vietnam war, was described by the Senate Intelligence committee in a recent report as "the principal instance of the use of the I.R.S. for a fundamentally improper nontax purpose."

Mrs. Abzug has sponsored a pending bill that would require that individuals subjected to improper government intelligence activities be notified that files relating to them are in existence.

Besides the revenue service, the only other Federal intelligence agency that has agreed to such notifications is the Federal Bureau of Investigation, which is currently advising several hundred targets of its counter intelligence operations of actions taken against them.

The Central Intelligence Agency, which in the late 1960's and early 1970's collected about 10,000 files on domestic groups opposed to the war in Vietnam and their members, has declined Mrs. Abzug's request to provide similar notification, a subcommittee aide said today.

PUBLIC NOTICE

Department of the Treasury / **Internal Revenue Service** / Washington, D.C. 20224

Commissioner

OCT 18 1976

Honorable Bella Abzug
Chairwoman, Government Information
and Individual Rights Subcommittee
Committee on Government Operations
House of Representatives
1507 Longworth Office Building
Washington, D. C. 20515

Dear Ms. Chairwoman:

In your letter of September 16, 1976, you asked that we inform those individuals and organizations whose letters you enclosed if their names appeared on the SSS list. We will treat these letters as requests under all applicable disclosure statutes and respond directly to the requesters.

You also asked for a status report of our progress regarding the notification program. Enclosed is a copy of the breakdown of mailout's results as of October 6, 1976, which updates Enclosure A of our September 7, 1976 letter. A substantial number of the notification letters have been returned as undeliverable and we are now trying to obtain current mailing addresses in order to remail these letters. We will research our master files to determine if a tax return with a new address has posted since our last search in May of this year. We will also research material available in the district office serving the last known address of each entity. Such material includes city directories, closed case files, and microfilmed tax return information. We believe these steps represent a sufficient, good faith effort on our part to notify all entities on which a field referral had been made by the former Special Service Staff. If these efforts are unsuccessful, we do not intend to take additional steps to notify these entities because we will have exhausted all sources of information reasonably available to us.

A few notification letters were returned indicating the addressee refused acceptance and in eight instances we have not received verification of delivery or returned mail from the Postal Service. We will remail notification letters for both categories.

With kind regards,

Sincerely,

Commissioner

Enclosure

Mailout Regarding Former Special Service Staff File

Letters Sent	731

Results of Mailing as of October 6, 1976

Undeliverable	331
Taxpayer Accepted Delivery	388
Taxpayer Refused Delivery	4
No Evidence of Delivery to Date	8
TOTAL	731

Request for Information Received 316

No letters sent in 20 instances where Intelligence investigation or litigation pending or where previous request received from taxpayers.

[COMMITTEE PRINT]

POLITICAL INTELLIGENCE IN THE INTERNAL REVENUE SERVICE: THE SPECIAL SERVICE STAFF

A DOCUMENTARY ANALYSIS PREPARED BY THE STAFF

OF THE

SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
NINETY-THIRD CONGRESS
SECOND SESSION

DECEMBER 1974

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1974

taking notes which were placed in the relevant case files. A good working relationship was apparently established with the House Internal Security Committee, in particular. The "Sources of Information—House Internal Security Committee" section, *infra*, contains a description of the procedures used by the Special Service Staff for accessing this Committee's extensive files. In many of the Special Service Staff case files, photocopies of file cards from the House Internal Security Committee were found

One of the Special Service Staff's main sources of information were publications—magazines, newspapers, newsletters, and the like. The *Internal Audit Report* of August 16, 1972, described the Special Service Staff's use of this source of information which included "many so-called 'underground' newspapers:"

> Two "drop boxes" and two pseudonyms are used to subscribe to 30 publications. Such publications serve as a source of information on matters involving taxable income of individuals, activities or organizations having or seeking tax exempt status, and identity of individuals or exempt organizations providing financial support to activist groups. The *Washington Post*, *Washington Star*, and the *New York Times* are reviewed daily for the same purpose. Also each member of the Staff is on the alert for relevant articles appearing in other newspapers and magazines.[109]

Printed in the "Sources of Information-Miscellaneous Sources" section is a working list of some of the publications to which the Special Service Staff was at one time considering subscribing. Some of the Special Service Staff files contain only clippings about various individuals and organizations. Other files are bound volumes of a year's issues of an underground newspaper or of a conservative newsletter.

Also in the "Sources of Information-Miscellaneous Sources" section are examples of two publications found in the Special Service Staff files: *Guide to the American Left* and *Guide to the American Right.* The Special Service Staff relied heavily on these listings of 5,400 individuals and organizations. The pages of these guides were well-worn with markings in various colors which indicated that the listings were continually referred to. For the most part, the *Guides* were merely name and address directories, with a few introductory comments. Still, the files contained a number of references to these *Guides* as the source of names for the establishment of Special Service Staff files.

There is no fully adequate way to describe the nature and substance of the Special Service Staff files. Out of the total of 11,458 files on organizations and individuals, Subcommittee counsel examined a random sample of 380 files (roughly 3 percent of the total) from which were excluded tax returns or financial information taken from tax returns.

Organizational Files

Out of the 2,873 Special Service Staff files on organizations, Subcommittee counsel examined 80 randomly-selected cases. The organizations which were the subjects of these files were of all types: a radical student group and a conservative student group, both conservative and liberal political action groups, and even a branch of the Republican party. About fifty local chapters of a moderate civil rights organization were listed. There were numerous religious groups including

[109] *Internal Audit Report, supra.*

several churches, a Black Muslim Temple and a Jewish organization. There were labor unions and professional associations, an organization of established lawyers as well as a younger, more politically active organization of lawyers. There were two legal aid offices and even a law students association. Several large foundations were represented, as well as three universities.

Two radio broadcasting groups are represented in the case sample, as well as numerous publications which range from general interest magazines to literary magazines to religious publications, conservative publications, magazines devoted primarily to sex, and, of course, numerous underground newspapers.[110] The sample of files on organizations included two major publishers and a book club. Also represented were a radical "think tank," a group interested in sensitivity training, a tax reform group, a local government's civil rights agency, and a file entitled "the Women's Liberation Movement." The sample also contained files on a congressional committee, a federal government commission and one foreign embassy.

The following examples are typical of the kinds of files the Special Service Staff kept on a wide variety of organizations. They demonstrate the Special Service Staff's activities and attitudes regarding such organizations and their members as well as the nature and contents of these files.[111]

1. *A conservative Student group*
   Case Review: Right wing Organization
   Newspaper clippings
   Literature from the organization
   Memorandum from a regional Commissioner
   FBI Reports
      X-ref: [two individuals: a local chairman and a national director]
      6-8-70 EOMF-NR
2. *A radical student group*
   Worksheet—Recommendation: no action necessary "Returns filed and taxes paid—examined by revenue agent. Contacted [district office] re: large contributors, will attempt to trace but fruitless (lack of addresses & SSN) two checked did not claim deduction on return"
   Sensitive Case reports
   FBI reports
   Memorandum requesting list of contributors
   Lists of contributors
   BMF
   Intelligence report
3. *A radical think tank*
   Case Review:
      X-ref: [a list of all employees]
      EOMF-NR
   Tax returns
   Social Security earnings schedules
   List of bank accounts
   Requests from Internal Security Division, Department of Justice for tax returns
   Sensitive Case Reports
      [date]—"this is a National Office controlled case"
      [date]—"recommend revocation of exempt status"

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[110] The report on "Special Service Staff Activity for the Period August 1969 through June 30, 1973" printed in the "Documentary History" section notes that the Special Service Staff had files on 148 "Identified Underground Newspapers (high potential for noncompliance)."

[111] In each of these descriptions the name of the file subject has been replaced by a general description of the organization, below which is listed a catalogue of the items of information contained in the file. Quotations from the file are edited with bracketed descriptions replacing names of individuals and organizations and dates, where these would tend to identify the organization.

IRS memoranda
FBI Reports
Photo-copy of letter from one think tank associate to another
Letters from AID, Department of State
Listing of related organizations

4. *An organization of Lawyers*
One clipping relates to organization's stand favoring the easing of exclusionary rule. The following information was highlighted: "organization of leading lawyers . . . members predominately conservative."

5. *An organization concerned with the protection of individual rights*
Case Review: See [a director] who complained about a questionnaire as "an invasion of privacy" that "casts a chill on people's rights to assemble."
BMF
FBI Report request—FBI reply: "see report sent in 1956"

6. *A medical organization*
Case Review:
"described as an organization deeply concerned with the health needs of the socially deprived"
List of officers
[date] "recommend that this organization be examined because of the wide publicity given to it as a communist infiltrated organization
[One month later]—"recommend be examined because of indications that this organization may be engaging in legislative activities as well as promoting various causes not related to tax exempt purpose"
[two months later]—referred to field
[one year later]—closed no change

7. *A tax-exempt student group*
Case Review:
EOMF print-out
Sensitive Case Reports:
[date]—"Revenue agent has started examination of books and records and perusing various publications"
[two months later]—National Office review of audit plan
[four months later]—audit resumed. "The organization's views on contemporary issues are constantly published in the news media. Members of Congress have shown interest in activities which encourage violation of selective service laws in certain cases. There has been inquiry as to propriety of permitting continued exemption under 501–C 3"
[three months later]—Memorandum from Nunez to Lipomi "Reference is made to memo dated [two weeks earlier] from Barth to Green and Form 1725 from Mr. Cowles regarding recommended revocation [of tax exempt status] retroactively to [four years earlier] for non-exempt activities," namely: positions regarding the draft and student power (also security clearances, birth control, a militant black organization, and drug laws) funded by government grants. "Indirect political intervention is inferred from advertisements to purchase political pins and stickers." Participation in a law suit against the draft was considered a legislative activity by the revenue agent. Also noted was the organization's encouragement of campus disorders.
Publications, leaflets, etc.

8. *A State University*
BMF printout—5 tax years
FBI Report (stamped "obscene") Re: [A series of protest meetings not sponsored by the university containing complete transcripts of all extemporaneous speeches made by students, faculty and others.

9. *An Underground Newspaper*
Request for FBI Reports
FBI Reports: include circulation list and reference to a connection with a legal aid office
Memorandum from Special Service Group Re: [Subject newspaper] "tone of information in the newspaper is always anti-establishment, pro-revolution, pro-drug, anti-law enforcement."
Case Review:
EOMF—NR
BMF—no returns
changed name to . . .

Closed—"individuals associated investigated, unable to ascertain tax liability. . . . Apparently those involved are students, anti-establishment oriented."
Copies of Newspaper

10. *A conservative organization*
Case Review:
4/16/70—BMF—NR, no returns
5/12/70—Request for FBI Reports—non available
6/29/70—"no useful purpose to go to field"
5/23/73—Request for FBI Reports—non available

11. *A Professional Association*
Case Review:
"Helped students at [a college] get ban against Communists speaking at [the college] lifted."
Photocopy of House Internal Security file card with information about organization's activities in opposition to fingerprinting.
EOMF
BMF
Tax return forms 940T (one year) and 940 (three years)

12. *A conservative foundation*
Case Review:
Source: [a publication]
"appealing denial of exempt status"
Request for FBI Reports
FBI Report:
"sponsors radio programs, some of which appear to have been critical of the Supreme Court and have made extreme proposals regarding a number of controversial subjects."
BMF
Tax returns (6 years)

13. *A religious organization active in liberal social causes*
Work Sheet:
"Information in our files indicate that the activities of this organization are in large part of a political nature. [The organization] sponsors many conferences that turn out to be militant. It also uses its resources to influence legislation."
Abuse of postage permit sent to Disclosure for the Department of Justice—"[the organization] stopped making records available when they realized what we were picking from their files."
Background Paper on [The Organization] from Wright to Green discusses allegations that the organization's board "is an ultra-liberal, leftist-oriented body of churchmen who have diverted great sums of money through [another subject organization] to extremist, dissident, militant and revolutionary causes," and then lists the organization's positions on a variety of issues.
Lists of contributors (2 years)
Photocopies of two cancelled checks made out to the organization
Request for FBI Reports—none available
An intelligence report from the Los Angeles Police Department
Clippings

14. *A conservative organization*
Case Review:
Source—[a publication]
"See also [a tax resistance organization]"
EOMF
BMF (5 years)
Tax Returns
Social Security Earnings Records
Request for FBI Report
Memorandum from SSS to Intelligence regarding a tax resistance meeting
"Through a complex of associations and interlocking directorates [the organization] has helped to raise campaign funds for conservative political candidates, supported anti-busing advocates and the white-controlled government of Rhodesia, and backed a number of ultra-conservative publications." The memorandum also notes the group's financial support for a conservative presidential candidate.
Newspaper clipping

15. *An organization opposed to the Viet Nam War*
Case Review:
March 9, 1970—"EO Branch notifies resumption of examination"
Action: "requisition returns of substantial donors."
June 29, 1970—"strategy" meeting in Commissioner's conference room with Justice Department representatives

Individual Files

From the 8,585 individual files the subcommittee counsel randomly selected approximately 300 for review. These files related to individuals of varying degrees of notoriety, representing all elements of the political spectrum, income-levels, and vocations. There were anti-war activists and draft-card burners. There were tax resisters: those opposed to income and telephone taxes on general principles and those who were opposed because the tax supported the Viet Nam war. There were priests, preachers, ministers, rabbis, atheists, lay churchmen and persons of varied religious persuasions. There were contributors to defense funds for radicals, as well as those who solicited such funds. There was an attorney active in defending radicals. There were hosts and hostesses and guests at "radical chic" cocktail parties. Also included were a number of individuals associated with "women's lib." There was a well-known actress who had actively supported Senator McGovern. Habitues of certain book stores, United Nations employees, a convicted political assassin, "communists," "alleged mafioso" and numerous civil rights leaders were also included. The files examined related to persons associated and "disassociated" with various racially oriented groups, as well as the officers of and contributors to such groups. There were incorporators, officers, contributors, employees and members of a wide range of conservative, liberal and radical organizations, as well as some persons who merely attended meetings.

All sorts of occupations were represented: athletes, medical doctors, actors, political analysts, philosophers, scientists, teachers, businessmen, printers, symphony conductors, singers, night club entertainers, comedians, composers and a counter-intelligence agent. The media were represented by a variety of editors, publishers, newspaper and magazine columnists (general, political and society), numerous authors of fiction and non-fiction, as well as pornography, film producers and broadcasters. There were various noted educators, university presidents, college professors and deans. There were labor union organizers and political contributors. There were candidates for office, successful and unsuccessful. The elected officials included a Republican governor, members of the House of Representatives from both political parties, several United States Senators of both political parties, a Democratic mayor and at least one city councilman. There were also two spouses of Democratic Members of Congress. Many file subjects were ordinary working-class Americans.[112]

[112] The *Internal Audit Report* of Aug. 16, 1972, described the "affiliations" of the 224 select individuals whose files were examined in 1972 as follows:

Organization:	*Percent of 224 individuals affiliated*
A white racially-oriented group	23
A black racially-oriented group	22
A radical student group about whom the White House had requested information	8
"War Tax Resisters"	5
Other	42
Total	100

Some examples of these files on individuals will illustrate the great variety of information found in them:

1. *A clergyman and professor of divinity.*
   Case Review:
      Affiliations with various religious, civil anti-war and university groups
   Social Security Number request
   Request for FBI Report
   FBI Report—describes background check, his application for a passport valid for Cuba, and the results of a check of the alumnae records center of a university
   Clippings, including a book review
   A photocopy of a $25 check to a humorously named, local antiwar coffee house
2. *A former Senate Constitutional Rights Subcommittee consultant*
   Case Review:
      2/1/70—Washington Monthly article containing material which had been classified
   Clippings from *COMBAT*, *Washington Star*, *Daily World*, *New York Times* and the *San Francisco Chronicle* dated between Feb. 1, 1970 and March 7, 1971
3. *A Professional writer, speaker and organizer*
   Case Review:
      Affiliations: refers to his public and speaking and training of student radicals, and notes that he is complying with the tax laws
      "Source believes [the individual] is motivated by financial reward, personal acclaim and sociological or humanitarian interests"
   IMF
   FBI Report
      Characterization: "Racial—Rabble Rouser Index"
   Clipping
4. *A civil rights leader*
   Case Review:
      Affiliation with civil rights organization "concerned about his leadership and amount of medication he is taking"
   IMF
   Request for FBI Report
   FBI Report
      FBI Rap sheet: 6 arrests, 1 disposition
5. *A symphony orchestra conductor and his wife*
   Clippings regarding their public support for a black organization and public speeches against the war.
6. *A black political leader*
   Case Review:
      Affiliations with black radical groups and civil rights groups
      Protest activities
      [date]—"incorrect information on failure to file"
   IMF
   Request for FBI Report
   FBI Report—"will be demonstrating and passing out pamphlets regarding war and welfare, may distribute petition."
   Clippings
7. *A labor organizer*
   Case Review:
   Request for FBI Reports
   FBI Reports
   Tax returns (6 years)
   Social Security Administration wage records
   Clippings
8. *A businesswoman*
   Work Sheet:
      Cross-reference to corporations and organizations with whom she is affiliated
   Sensitive Case Reports
   Tax Returns

Local police Department's intelligence report: Gives full identification; address, occupation, credit standing, financial and real estate holdings, voter registration (Republican), civic activities, education, associations with various liberal lawyers, and a "Communist Party" worker who "follows CP line"; notes that the individual's father was born in Russia; and emphasizes that the express opinions "slanted against the police in favor of suspects' rights."

9. *A black entertainer*
   Case Review: "an entertainer"
      Affiliations with and allegations of large contributions to certain black militants and radical black organizations
      [date]—asked relevant Regional Office for returns (3 years)
      [date]—no gifts as alleged
   Request for FBI Reports—reply "no file"
10. *An anti-war activist*
   Case Review:
      Affiliations: "mentioned as speaker in [an anti-war organization's] files; associated with radical think-tank
      [date]—"allegedly served" in a defense-related government agency during a Democratic administration; named by Hanoi Radio as a participant in an anti-war meeting
      [date]—received $1,500 from a private foundation
   IMF
   Memorandum from A.O. Committee regarding radical think-tank
      [subject individual] listed as an anti-war speaker, subject signed anti-war advertisement, and was an officer of an organization "under Communist Party discipline."
   Request for FBI Reports
   FBI Reports—background checks, participation in various conferences, anti-war organizations
   Internal Security Division, Department of Justice request for tax returns
   Tax returns (4 years)
11. *A journalist*
   Two clippings regarding his 60th birthday party
12. *A black militant*
   Case Review:
      Affiliations—militant black organizations "reported to be a 'stooge' or 'figurehead' for another black militant"
   FBI Report, with letter from FBI director, directing the Internal Revenue Service's attention to the finances of certain black militant organizations
      [date]—purchased a composition machine [printing press] $19,000
   Sensitive Case Reports
   Tax returns with reports of audit
13. *A telephone tax resister*
   Copies of letter from taxpayer to Internal Revenue Service and Internal Revenue Service's response
14. *A member of a white militant group*
   FBI Report—"Racial matter"
      personal background, occupation, credit record, record of firearms ownership
15. *A former United States Senator*
   Clipping: photograph of Senator and short news article describing him as an anti-war leader and noting his plans to participate in a protest against the draft
16. *A political analyst and activist on White House enemies list*
   [Ed. note: the file folder was empty. The index card stated that the individual's name was furnished to the Special Service Staff in a letter dated 8/2/72 from the Disclosure Staff to Assistant Attorney General, Internal Security in response to Justice Department request of 7/20/72 for copies of the individual's 1970 and 1971 income tax returns.]
17. *Activist Attorney*
   Case Review:
      Affiliation: a legal defense fund for a black militant
      "[a newspaper article] said the activist attorney was supporting [another individual] in his threat on the President's life."

Clipping—the newspaper article summarized above. It actually stated ["The activist attorney] said that "The Supreme Court has held that political hyperbole even about the President's life is protected by the First Amendment.' "

18. *A writer for a major, general circulation, magazine*
    Case Review:
        "Name obtained from FBI Booklist" [Ed. Note: a frequently made, incorrect reference to the ISD Civil Disobedience computer print out]
        Affiliations: "author and critic"
            staff writer for [a major magazine] two radical funds
        [date]—endorsed protest march on Washington
    IMF (4 years)
    Request for FBI Reports
    FBI Report: [dated 1946] "Security Matter—C" [Communist]—background check, discusses his affiliation with a certain school, relates a remark to a college girlfriend regarding his "intelligence activities," and closes with the conclusion that there is "no evidence of Communist Party membership."
19. "Mrs. _____ [a prominent political family]"
    FBI Report—excerpt from larger report regarding a black militant organization "Described as wealthy, white, very liberal. In June 1970 arrangements were made for meeting by [an anti-war leader] to have her donate $30–40,000 for [a black militant] coffee house."
    [Ed. note: neither the FBI nor the Special Service Staff ever ascertained which "Mrs. _____" was described in this report.]
20. *A prominent black businessman*
    Case Review:
        Affiliations: black militant organizations, anti-war activities business enterprises
    IMF (11 years)
    Social Security Earnings Record
    Request for FBI Reports—reply "no arrest record"
    FBI Reports—tracing financial dealings, including alleged receipt of large sums of money from both prominent Black Muslim organizations and Jewish foundations and discussing his public speeches: "He spoke with a militant, arrogant pride which apparently stemmed from a high degree of bitterness. He demanded Black Power."
    Clippings
21. *A Radical lawyer*
    IMF (7 years)
    Request for FBI Reports
    FBI Report: 'Security Matter—Anarchist"
    Describes his personal history, the organization to which he belongs, the cases he has handled, his opposition to HUAC and the SACB as "stifling expressions of individual opinion," and his "inflammatory remarks against this government in discussing civil rights matters."
    Clippings
22. *A black civil rights leader*
    Case Review:
        Affiliations: civil rights organizations
        "Sent file to Secret Service"
    IMF (4 years)
    Social Security Number request
    Request for FBI Reports
    FBI Report: regarding non-violent activities
    FBI Rap sheet—4 charges, no dispositions
    Clippings
23. *A noted scientist*
    Case Review:
        Affiliation: "CPUSA"
        Source: House Internal Security Committee
    Request for FBI Report
    FBI Rap sheet—one arrest in a foreign country for possession of marihuana, for which he paid a nominal fine

24. *A newspaper columnist*
Case Review:
Social Security Number request
IMF (5 years)
Request for FBI Reports
FBI Report—"Name check" describes columnist as being on the mailing list of a black militant organization and a writer for a student radical group, and notes that he makes "Unfounded allegations against [FBI] Agents."
Clippings

25. *A tax lawyer*
Case Review:
Request for FBI Reports—reply, "not enough identification"
Memorandum from SSS to Deputy Assistant Commissioner (Compliance)—considers possibility that the tax lawyer "could be cited as having violated Code of Conduct (TC 230) because he knows of and condones tax evasion tactics." The tax lawyer "represents nearly all of the radical left groups" in a certain area of the country
IMF (8 years)

[Ed. note: the case was still open as of the date of the subcommittee's review of the Special Service Staff files.]

The files described above were typical of those examined on a random basis by the Subcommittee staff, and were, as far as the subcommittee is aware, representative of the other 8,500 files on individual taxpayers which it did not examine.

A Postscript

As mentioned previously, the Subcommittee staff was not permitted to examine tax-related matters contained in the Special Service Staff files. It was, therefore, unable to determine through its examination whether any adverse tax actions were later brought to bear against the individuals and organizations identified.

It might have been possible for the staff to have contacted each individual and organization identified in the files to ask if they were aware of any such adverse actions by IRS during this time period. The staff concluded, however, that such an investigation would unavoidably involve inquiries into the private financial affairs of those identified, and, thus, the idea was rejected.

Only in one special case did the Subcommittee make a follow-up inquiry and this was addressed to the individual identified in the files who had been a consultant to the Subcommittee during its investigation of Army surveillance. The staff was concerned that the consultant's appearance in the IRS files may have been the result of his work for the Subcommittee. It, therefore, felt compelled to determine whether the individual had actually been penalized by the IRS as a result.

The Subcommittee staff asked this individual whether he had been the subject of any adverse IRS action between 1969 and 1973. He responded that in fact, he had been audited in 1970, but as a result of the audit, it was determined that he had overpaid his taxes and that he was due a tax refund.

Any conclusions one may draw from this must necessarily be tentative. On the one hand, the audit took place the year after the individual's file was begun by the Special Services Staff. However, it occurred in a year when the individual was completing his doctoral studies, and his only income was derived from a small grant and fees for two free-lance magazine articles. Accordingly, his income was

94th Congress
1st Session

COMMITTEE PRINT

INVESTIGATION OF THE SPECIAL SERVICE STAFF OF THE INTERNAL REVENUE SERVICE

PREPARED FOR THE

JOINT COMMITTEE ON
INTERNAL REVENUE TAXATION

BY ITS STAFF

JUNE 5, 1975

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1975

JCS-9-75

II. SUMMARY [1]

Formation of Special Service Staff

In early summer 1969 there was substantial interest in both the White House and in Congress for the Internal Revenue Service to examine activist groups to see if they were meeting their tax responsibilities. There was also interest within the Service to act in this area.

The interest of the White House in tax examinations of left wing tax exempt organizations apparently was conveyed to the Commissioner of Internal Revenue, Randolph Thrower, by Dr. Arthur Burns [2] (then Counselor to the President) and by Tom Charles Huston (then on the White House staff), at a meeting in the White House on June 16, 1969. After the meeting, Mr. Thrower apparently told Roger V. Barth (then Assistant to the Commissioner) to get in touch with Mr. Huston. Mr. Huston sent a memorandum to Roger V. Barth on June 20, 1969, repeating the interest conveyed to Mr. Thrower at the earlier meeting. Mr. Barth apparently replied by sending Mr. Huston a memorandum on "Ideological Organizations" which had been prepared within the IRS for Mr. Barth on July 1, 1969, and a later memorandum describing the organizational meeting of the SSS. It also seems that this interest of the White House was communicated to some employees of the Service outside the Commissioner's office. However, the people who were in the office of the Assistant Commissioner (Compliance) and who were directly responsible for setting up the SSS do not recall any such White House interest.

The Permanent Subcommittee on Investigations of the Senate Committee on Government Operations also indicated an interest in having the Service act in this area. In early 1969 the Subcommittee was preparing for general hearings on militant organizations. In the course of these preparations the Subcommittee staff had discussions with the IRS about IRS actions regarding militant organizations. Also, the Subcommittee held a hearing in executive session devoted to IRS actions concerning militant organizations, where only Revenue Service people testified. (This hearing occurred on June 25, 1969, five days after the date of Mr. Huston's memorandum to Mr. Barth, described above.) The staff understands that this was the only hearing the Subcommittee held during its general hearings on militant organizations which was devoted solely to testimony by an executive agency with respect to its activities concerning such groups. At this hearing, the chairman of the Subcommittee stated his interest in having the Service act with respect to militant organizations, al-

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[1] This section consists essentially of the same material that appears at the beginning of each succeeding section of this report under the heading *Summary*. Therefore, the summary material can be read in its entirety in this section, or the pertinent parts can be read separately in connection with each individual section.

[2] Dr. Burns has told the staff he has no recollection of meeting with Mr. Thrower to discuss this issue.

though he also indicated he was not criticizing the Service for its prior activities.

There also was activity within the Service regarding militant groups. In March 1969, Donald L. Bacon, then the Assistant Commissioner (Compliance) asked the field for information on 22 extremist organizations. (These were organizations in which the Permanent Subcommittee expressed an interest, but the Subcommittee had not asked for this information to be compiled by the IRS.) Also on July 1, 1969, there was a presentation by an Alcohol, Tobacco and Firearms (AT&F) investigator on militant organizations to the staff of the Assistant Commissioner (Compliance); this probably also added to the concern of the Service.

It appears that the recommendation to set up the SSS was made by Leon Green, the Deputy Assistant Commissioner (Compliance), with the concurrence of Mr. Bacon, the Assistant Commissioner (Compliance). It also appears that Mr. Green's recommendation was significantly influenced by his reaction to his appearance before the Permanent Subcommittee on Investigations at its June 25, 1969, hearing.

The staff has not found any evidence that anyone in the White House requested that the Service establish a special compliance or data gathering project dealing with extremist organizations. Mr. Green and Mr. Bacon, who apparently made the decision to establish the SSS, told the staff that they do not recall any pressure from the White House to set up such a project. Additionally, the staff did not find any evidence that such requests were made by anyone in the Congress.

Nevertheless, the effect of White House and congressional interest (which occurred at essentially the same time) cannot be ignored. Because of this interest, it seems clear that some action by the Service with respect to militant groups was inevitable. The Joint Committee staff believes these were decisions made by the Deputy Assistant Commissioner and the Assistant Commissioner (Compliance) but probably in large part because of the interest of the White House and the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations.

Development and termination of the SSS

The SSS was established in several organizational meetings held in the IRS during July, 1969. During this time, the initial SSS personnel were chosen and the functions of the SSS were set out. The SSS was to "coordinate activities in all Compliance Divisions involving ideological, militant, subversive, radical, and similar type organizations; to collect basic intelligence data; and to insure that the requirements of the Internal Revenue Code concerning such organizations have been complied with." Also, some people associated with the SSS indicated that they believed the SSS was to play a role in controlling "an insidious threat to the internal security of this country."

The people involved with the SSS had a difficult time determining precisely what organizations and individuals to focus on. It appears from the staff's examination that the day-to-day focus of the SSS was largely determined by information it received from other agencies, as the FBI and the Inter-Divisional Information Unit of the Justice Department.

The SSS generally operated by receiving information from other investigative agencies and congressional committees, establishing files on organizations and individuals of interest, checking IRS records on file subjects, and referring cases to the field for audit or collection action. Also, the SSS provided information to the Exempt Organization Branch (Technical) with respect to organizations whose exempt status was in question. This method of operation was established by late 1969. (Each of these areas is described in detail in later sections of this report.)

In 1972, after a visit to the SSS basement office by Commissioner Walters, the SSS was moved to a different location, was included in the Revenue Manual, and was discussed at a conference of the Commissioner, his Deputy and Assistants, and the Regional Commissioners. Also, automation of the SSS files was planned, but was never implemented.

In May 1973 (one day after he was sworn in), Commissioner Donald C. Alexander met with top IRS personnel with respect to the SSS and directed that the SSS actions were to relate only to tax resisters. This was reemphasized in a second meeting held at the end of June 1973. In early August 1973, the Commissioner learned of National Office responsibility for an IRS memorandum relating to the SSS published in *Time* magazine. The Commissioner felt that this memorandum described activities that were "antithetical to the proper conduct of . . . tax administration" and he announced (on August 9, 1973) that the SSS would be disbanded.

Between August 9, 1973 and December 20, 1973 the SSS files were reviewed by IRS personnel to determine if any files had audit or collection potential. However, except for 230 cases relating primarily to war tax resisters, no field referrals were made from SSS files after August 9, 1973.

The Commissioner has testified before the Congress that when the various investigations of the SSS are completed, he will seek permission to destroy all the SSS files.

Special Service Staff Files

The SSS began with the names of 77 organizations and by the time it was disbanded in 1973 there was a total of 11,458 SSS files on 8,585 individuals and 2,873 organizations. The subjects of these files included organizations and individuals with widely varying points of view, from all parts of the country and from many vocational and economic groups.

Based on a random sample of the files examined by the staff, approximately 41 percent of the SSS files are on Black (and ethnic) organizations associated with violence, confrontations and civil disturbances (as well as some not associated with such activities) and their leaders, employees, and members. Approximately 15 percent of the SSS files are on what are generally considered to be White "right-wing extremist" and "racist" organizations advocating the use of force and violence. Approximately 18 percent of the files are on anti-war organizations and their leaders, employees and members. Approximately 11 percent of the files are on "new left" radical groups and their leaders and members. There are also a number of files on "liberal establishment" organizations such as church groups, etc.

There appears to have been no clearly defined criteria for the SSS to use in selecting a file subject. Instead, it appears that, for the most part, files were established based on the source material available to the SSS. The primary sources of names for the SSS files were the Department of Justice civil disturbance lists and the FBI reports sent to the SSS. The SSS received more than 11,000 FBI reports in four years. At times, particularly in the early days of the SSS, a significant portion of time was used to cope with (and set up files based on) FBI reports.

The Department of Justice (through FBI reports and the civil disturbance lists) appears to have provided over half of the subjects for the SSS files. Other sources included Congressional committees (3 percent), the IRS (11 percent), and books and publications (12 percent). The SSS also received information from an informant in the Washington, D.C., area.

The SSS files vary considerably in size and contents. Many are one-half inch to 1 inch thick (in 8½ by 11 inch manila folders) and consist largely of FBI reports. The files also include SSS worksheets, IRS master file computer printouts, newspaper clippings and miscellaneous information. The FBI reports often contain information on specific meetings or incidents involving an individual or organization; they also often contain background and biographical information on individuals. The FBI reports (which furnish the bulk of the SSS files) contain little information directly relevant to the administration of the tax laws, although they sometimes include information on employment and assets (such as vehicles and firearms). In a few cases the FBI reports include information on specific financial transactions.

Coordination with other government units

The SSS received information from a number of other Federal agencies, from congressional committees, and from some State and local agencies. As described in the section on Special Service Staff files, this information was used by the SSS as a source for establishing files and to augment previously established files.

Many of the SSS contacts with other agencies apparently were initially made on an informal basis by two SSS employees who had previously established their own associations in the intelligence community. (One of these employees was detailed to the SSS from the Alcohol, Tobacco and Firearms Division of the Internal Revenue Service.[3] The other employee had been detailed from the Service's Intelligence Division.) Formal contact also was established with other agencies; however the initial informal contact of these employees seems to have been an important element in the SSS coordination with other agencies and Congressional committees.

The most important sources of information for the SSS were the FBI and the Inter-Divisional Information Unit of the Department of Justice. Also, the Social Security Administration was of substantial importance (although, of course, the SSS did not receive "intelligence-type" information from Social Security). The Departments of Army, Navy, and Air Force also provided the SSS with information. Other Federal and State agencies also aided the SSS, although to a much smaller extent.

[3] On July 1, 1972, AT&F became a separate Treasury bureau.

With respect to congressional committees, the House Internal Security Committee provided a significant amount of information to the SSS. The Subcommittee on Internal Security of the Senate Judiciary Committee and the Permanent Subcommittee on Investigations of the Senate Government Operations Committee also provided some information to the SSS.

Most of this coordination with other government units involved the SSS receiving information. In addition, some information was provided by the SSS to other government agencies and to congressional committees.

Communications With the White House.—There is some evidence that, after the formation of the SSS, there were inquiries to Roger V. Barth (formerly Assistant to the Commissioner) from the White House regarding specific organizations. Additionally, Mr. Barth made some inquiries regarding specific organizations to the office of the Assistant Commissioner (Compliance) which were answered by the SSS. However, the staff has not found any evidence that ties these White House inquiries on specific organizations to the inquiries from Mr. Barth that went to the SSS. In one case, information on contributors to a "left-wing extremist" organization went to the FBI from the IRS, and then from the FBI to the White House. The SSS was involved in this transfer of information to the White House.

In September 1970, Randolph Thrower, then Commissioner of Internal Revenue, reported to the White House in response to an inquiry from Tom Charles Huston regarding the activities of the SSS in general. This report did not deal with any specific individuals or organizations. Mr. Huston has told the staff that he forwarded this report to Mr. H. R. Haldeman, and thereafter he heard nothing from Mr. Haldeman on the issue and did nothing more with respect to this activity of the IRS.

Mr. Huston also has told the staff that he not talk with people in other executive agencies, such as the Department of Justice (or the FBI) to encourage them to help the IRS with respect to the SSS. Additionally, Mr. Huston has told the staff that he did not talk with the Internal Revenue Service about the SSS (or about the Service, in general) in regard to the Report of the Interagency Committee on Intelligence (the "Huston Plan").

Field referrals

The SSS referred to the field for audit and collection activity[4] a total of 225 cases concerning individuals and organizations in the SSS files. (If husband and wife are counted separately, the referrals total 234. If additional known "communications" with the field are added, the total is 250.) The staff examined field office and SSS files for 149 of these cases, or approximately 66 percent of the total (225) number of cases referred to the field. As between individuals and organizations, the staff examined these files for 93 individuals and 56 organizations. The staff generally did not examine the complete field files on cases in current collection or audit action, to avoid interfering with such action.

It appears that SSS personnel would check centrally maintained IRS master files on a relatively systematic basis to see if individuals or organizations in the SSS files had filed required tax returns and (if filed) whether the returns indicated that an audit examination

[4] In general, audit activity recommended by the SSS involved examination of returns already filed. Collection activity involved securing unfiled returns.

was appropriate. However, in the early stages, it appears that the SSS focused on one Black militant group (and individuals associated with the group) and also on one extremist left wing group (and individuals associated with that group). In at least one later situation, it appears that one group of organizations and associated individuals (underground newspapers and their editors) were given special attention by the SSS.

It appears that generally field referrals were not made by the SSS without some consideration of tax-related information, and that a field referral generally would not be made unless there was some reason to believe that there might be a failure to comply with the tax laws. However, in some of the cases reviewed by the staff, the tax deficiency potential appeared to be marginal, based on the information contained in the file. Also, in some "national security cases" it appears that the SSS may have made field referrals without checking an individual's wage (or other financial) records to determine if there was some evidence that a person who had not filed a return had taxable income.[5] Also, in many cases a summary of non-tax background information from FBI reports was sent to the field, including an individual's activities such as speeches given, attendance at meetings, or demonstrations, etc. The background information also would include the individual's affiliation with Black militant groups, anti-war groups, or similar organizations.

SSS field referrals were made in the form of a transmittal memorandum with an attached information sheet and a recommended action. Initially (from August 1969, to June 1970) the transmittal memorandum indicated the field was to promptly take the action recommended by the SSS. Later, the form of the transmittal memorandum was changed, indicating that the field should take the action it deemed appropriate. The field objected to the recommended action only in a few cases. The field generally would take action on and close a collection case in about six months from the date of referral; an audit case could take somewhat longer.

The reaction by the field may have been affected because of the request by the SSS for a status report. Initially, the field reported to the SSS using sensitive case reporting procedures under which a report was required whenever there was a significant development. In June, 1972, this procedure was terminated and the field was instructed to inform the SSS of the results of any investigation. Then, in April 1973, quarterly status reports were required to be submitted to the SSS for each case initiated by it.

In collection cases referred by the SSS, the field generally would attempt to contact the taxpayer and arrange for the filing of any required returns. In collection cases where no return was required, during at least one year the SSS recommended that the field secure a signed, witnessed statement that no return was required. This type statement was not generally required by the IRS. In audit cases referred by the SSS there would be an office audit or a field audit, as appropriate. In a number of collection cases referred by the SSS the field determined that the individual was not required to file a return. Similarly, in some audit cases an audit was not conducted

[5] Additionally, as described below, field referrals in "war tax resister" cases were made on a different basis than other referrals.

because, after survey of the return, the field decided no revenue potential was apparent.

In one case examined by the staff, the field objected to the recommended action because the District Director felt the recommendation discriminated against taxpayers associated with Black militant organizations. In another case, the field refused to follow the recommended action because an audit would not be required of a similar community fund-raising organization and the noncompliance potential was minimal. However, refusal to follow an SSS recommended action was unusual.

On the other hand, in one case examined by the staff, the revenue agent auditing the organization maintained frequent contact with the SSS, and the SSS provided information to the agent during the course of his examination of the organization. (This audit apparently began before the SSS field referral.) However, this extensive degree of communication directly with the field agent was not common. In most cases the only communication after a referral from the SSS to the field was one or more status reports from the field to the SSS and inquiries by the SSS to the field about the status of a case, where there had not been a status report for 3 to 6 months.

At the time it was discontinued, the SSS had established files on 8,585 individuals and 2,873 organizations. Approximately 800 of these cases were classified as "war tax resister" cases. According to information furnished the staff by the Internal Revenue Service, the SSS requested searches of Internal Revenue Service individual and business master files with respect to the filing status of 3,658 individuals and 832 organizations in the SSS files. In addition, the SSS conducted searches of the Internal Revenue Service exempt organization master file with respect to 437 organizations.

The SSS made field referrals on 136 cases involving individuals (145 if a husband and wife were counted separately) and 89 organizations. Of the 225 total referrals made by the SSS, 176 initially were collection cases and 49 initially were audit cases; however, there were later field transfers from collection to audit. Categorizing the individuals who were the subject of field referrals, 63 (of 136) appear to be primarily affiliated with Black militant groups. The next largest affiliation was 24 individuals primarily affiliated with anti-war groups. Additionally, of the field referrals there appeared to be the following primary affiliations: 13 individuals affiliated with student activist groups, 10 affiliated with civil rights groups, 10 affiliated with left-wing groups, 7 affiliated with right-wing groups, and 9 affiliated with other types of groups.

With respect to organizations, 57 (of 89) field referrals related to organizations which were considered by SSS as either left-wing (23), anti-war (19), or underground newspaper organizations (15). The remaining referrals were considered by the SSS to be of the following types: 6 Black militant organizations, 3 welfare and antipoverty groups, 3 religious organizations, and 20 organizations which were either civic, educational, social, or other types.

Total net assessments against individuals were approximately $580,000, but approximately $501,000 of that amount was attributable to four cases. Also, in 89 (of 136 total) cases, either no return was se-

cured, a refund was paid, or no tax was due. For organizations, the net revenue assessed was approximately $82,000, and the Service revoked its determination of exempt status in one field referral case. (For other actions involving exempt organizations see the section on coordination with the exempt organizations branch.) The staff understands that less than $100,000 of the total assessments has been collected, but that a significant portion of the amounts assessed is still in controversy.

The staff also reviewed SSS field referral cases for any follow-up activity by the field. In nine cases reviewed by the staff there was follow-up activity where the SSS-initiated action had not been closed before the returns for the later years were required to be filed. In six cases (some of which were among the nine just noted), there was later field action based on routine computer selection. The staff did not find any evidence that an SSS referral resulted in a taxpayer being placed on a list for future audit or collection action solely because the SSS referral had been made.

Generally, it appears that the SSS did not refer cases for field action without some analysis to determine a tax basis for the referral. The number of requests for Social Security data, master file checks, and requests for copies of returns tend to indicate that an effort was made to obtain tax information to form the basis for a referral to the field. Moreover, the small number of cases actually referred to the field in relation to the number of files established tends to indicate that the SSS generally screened cases before making a referral to the field. In the course of its review of the SSS files, the staff found that in some cases the tax-related information contained in the referral attachment might be considered to be insignificant. (However, the staff realizes that the evaluation of the significance of much of the material involves the exercise of individual judgment. In this light, the staff did not review any referral which was completely devoid of tax-related information, except for one "national security case".)

The unusual features of the SSS field referrals were (1) requiring an individual who was not required to file a return to sign a statement to that effect, (2) the direction to the field to take a specific action (in the initial transmittals), (3) the inclusion of background material which had a dubious relationship to tax liability, and (4) the requirement that sensitive case reporting or other progress reports be used in all cases. As a result of its review of the files, the staff concluded that the field generally did not treat taxpayers referred by the SSS any harsher than it would have in a routine case, although in a few cases the field examination may have been excessive in attention to detail.

With respect to the priority given to the SSS referrals by the field, it appears that SSS personnel initially believed that their case referrals would be given priority treatment by the field. However, the documents reviewed by the staff indicate that SSS personnel later became concerned that these cases were being handled in a routine manner by the field. From its review of the SSS files and related field office files, the staff has concluded that, except in isolated cases, the field handled the SSS referrals in a routine manner.

Field referrals on war tax resisters

In 1970 the SSS began to take account of what it called "war tax resisters." A "war tax resister" generally was defined as an individual

or organization that refused to pay Federal income or excise taxes as a protest against the United States' participation in the Vietnam war or who encouraged others to refuse to pay taxes. (However, the staff reviewed several cases included by the SSS in the war tax resister group of cases where noncompliance occurred because of a tax protest that was not directed toward the Vietnam war.)

The SSS classified approximately 800 files as "war tax resisters," and it referred to the field 550 of these cases. These referrals occurred in two groups, the first a group of 320 cases during March–April 1972, and the second a group of 230 cases during December 1973, after the SSS had been terminated. Unlike the other field referrals (discussed above) where the SSS recommended that the field take specific action, the tax resister referrals were sent out for the information of the field offices and for whatever action they "deemed appropriate."

Coordination with Exempt Organization Branch

Under a written operating procedure, certain exempt organization cases handled by the National Office were coordinated with the SSS. If a case involved a so-called "activist organization," the case was classified as an SSS case by the Exempt Organizations Branch (Technical) (the E–O Branch) and referred to the SSS in order that they might have an opportunity to see open case files pertaining to these organizations. The SSS would, in turn, flag those cases in which they were interested, request additional information from various agencies, and forward this information to the E–O Branch for its consideration in disposing of the case. Much of this information concerned officers or other individuals associated with the organizations seeking exemption.

During the period that the SSS was in existence, approximately 153 cases were referred to it by the E–O Branch. The SSS expressed an interest in 80 of these cases. In several cases, the SSS went beyond merely furnishing information to the E–O Branch and recommended a particular disposition of the case.

Although the SSS attempted to influence a decision of the E–O Branch in several cases in which they had expressed an interest, the staff, after analyzing the cases, found that the SSS played little, if any, part in the disposition of the substantive issues in the case. At an early stage in the operations of the SSS, it was established that the SSS was not to have a role in the determination of exempt status under the tax law. However, confidential information submitted by the SSS was used by the E–O Branch in several cases as a basis for requesting additional information from the organization seeking exemption. In addition, this information was considered in determining whether the organization's operations should be audited in the near future.

Finally, a review of the files showed that coordination with the SSS resulted in a delay in the rulings process. In many cases in which the SSS expressed an interest, the disposition of the case was delayed for a period of approximately one to three months, primarily as a result of coordination with the SSS.

Previous "Ideological Organizations" Project

In the fall of 1961 the Internal Revenue Service began an examination of extremist right-wing organizations. By spring 1962 the program included both left-wing and right-wing organizations; under

this program, a total of 22 organizations were examined, 12 right-wing and 10 left-wing. This program apparently was stimulated by a public statement of President John F. Kennedy and also a suggestion by Attorney General Robert F. Kennedy. The first-phase program was substantially completed by mid-1963.

In the summer of 1963 the Service began another program of examining extremist organizations; in some respects, however, this was an outgrowth and a continuation of the first program. The second program apparently was stimulated by White House communications to the Internal Revenue Service, including a telephone call from President Kennedy to Commissioner Mortimer M. Caplin. This program involved 24 (later 25) organizations. While the program originally was to be balanced between both right- and left-wing organizations, in practice it appears that 19 of the 25 organizations examined were right-wing. (This characterization was made by the IRS.)

Under the first-phase program, the National Office directed the field to audit the organizations in question, but there was little involvement of the National Office in the audit process itself. In the second-phase program the field, at the direction of the National Office, collected information for the National Office. The National Office then analyzed these facts to determine if each organization in question should be treated as tax-exempt. This project included a study of organizations that might be engaged in activities that could raise questions about their exempt status (*e.g.*, whether they properly could be treated as tax exempt "educational" organizations).

The staff has found no evidence that the White House or the Attorney General supplied names of organizations to be audited. However, a member of the White House staff reviewed the list of organizations proposed for the second-phase audit program and suggested that two organizations be deleted. These organizations were deleted from the list for audit, although one was subsequently added back. Additionally, it was reported that the Attorney General suggested that the IRS move its investigation of one particular organization along in rapid fashion.

The first-phase program was largely completed by July 1963. (In some cases, the examination of an organization was not complete and it was made part of the second-phase program.) By this time, it appears that the IRS had recommended revocation of the exempt status of two right wing organizations and had notified another right wing organization that its exempt status would be revoked. Also, there were adjustments on audit with respect to two non-exempt right wing organizations, and there had been a disallowance of deductions in one case for contributions to a non-exempt organization. The staff did not find any information that the IRS made any adjustments on audit, or revocation of exempt status, with respect to the left wing organizations in the first phase program.

The second-phase program was largely underway by the end of 1963. For the most part, it was completed by 1966. By 1967, the exempt status of 4 organizations examined under the program had been revoked; of these organizations, 3 were right-wing and 1 was left-wing. (In the case of one of the right wing organizations, revocation had been recommended in the first phase program.)

APPENDIX 5.—MATERIALS RELATING TO JUSTICE DEPARTMENT NOTIFICATION PROGRAM

NINETY-FOURTH CONGRESS

Congress of the United States

House of Representatives

GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C
WASHINGTON, D.C. 20515

September 29, 1976

Hon. Edward H. Levi
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

Enclosed is a copy of remarks I made on the floor of the House on September 27, in which I submitted a Washington Post editorial of that day entitled "That 38 Year Investigation". In the course of my remarks I raised several questions to which I would appreciate having your answers. They are as follows:

1. Please describe the Department's plans for notifying the subjects of the almost 20,000 files recently closed as a result of the new "quality over quantity" program. Since these investigations have been discontinued, I would assume that many of them should not have been opened up in the first place. I would also assume that many of the files contain material describing how individuals exercise rights guaranteed by the first amendment. As you know, the maintenance of such files is prohibited by the Privacy Act of 1974.

2. Please supply me with a current status report on the limited notification program instituted by the Department in the matter of the COINTELPRO program.

3. Please supply the exact number of agents who had been working on the approximately 20,000 discontinued investigations, and inform the Subcommittee as to what duties they have been reassigned. Specifically, have any of the agents who have been freed up as a result of

the discontinuance of almost 20,000 investigations been assigned to the Freedom of Information Act Unit? To the investigation of the murders of Orlando Letelier and Ronnie Moffitt?

I look forward to an early reply to these questions.

Sincerely,

BELLA S. ABZUG
Chairwoman

Enclosure

THAT 38-YEAR INVESTIGATION

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from New York (Ms. ABZUG) is recognized for 15 minutes.

Ms. ABZUG. Mr. Speaker, I wish to share with my colleagues an editorial which appeared in the Washington Post of September 27, 1976, regarding the FBI's investigation of dissident and extremist organizations. The editorial describes the incredible lengths to which the FBI went in investigating some groups which were engaged in nothing more than exercising their first amendment rights.

As chairwoman of the Government Operations Subcommittee on Government Information and Individual Rights, which has oversight of the Privacy Act of 1974, I have been keenly aware of the requirements of that act which prohibit certain kinds of files from being maintained by Federal agencies. When I read of Clarence Kelly's disclosure that the FBI's domestic caseload had been reduced from 21,414 investigations to 626 current cases, my immediate query was: Will the FBI notify the subjects of the files on the closed cases and allow them to exercise their rights under the Privacy Act? I am certain that many of these files deal with matters describing how an individual exercises rights guaranteed by the first amendment, yet the maintenance of such files is prohibited by the Privacy Act.

The editorial also refers to the FBI's counterintelligence program—COINTELPRO. I am the sponsor of a bill, H.R. 12039, which would require the FBI to notify every individual and organization subjected to that program as well as many other improper or illegal intelligence activities. The Justice Department has agreed to notify a selected few of the victims of COINTELPRO, and this should be a precedent for their notifying the 20,000 subjects of the discontinued files. However, the notification program conducted by the Department of Justice in the COINTELPRO case has been inadequate. I hope that they will now undertake to make complete disclosure to the individuals or organizations who are the subjects of files which should not have been opened in the first place.

I was also struck with the misallocation of resources which must have gone into the maintenance of such an enormous and apparently unnecessary caseload. Mr. Speaker, what are the agents who are working on over 20,000 cases now doing?

My subcommittee also has jurisdiction of the Freedom of Information Act and it is well known that the FBI is almost a year behind in responding to Freedom of Information Act requests. Under the law, they are supposed to respond within 10 days. Surely, some of the personnel freed up as a result of the cutback could be allocated to freedom of information work. Also, international terrorist activities have occurred right here in Washington, D.C., with the infamous murder of Orlando Letelier and Ronni Moffit. Again, I would suggest that some of the FBI personnel freed up as a result of the cutback be used to solve this hideous murder.

The editorial follows:

THAT 38-YEAR INVESTIGATION

It was the first appearance of the director of the FBI before the new Senate Intelligence Committee, and Clarence Kelley's disclosures made the most of it. Mr. Kelley announced that the FBI's domestic intelligence caseload had been reduced by 97 per cent, from 21,414 investigations in 1973 to 626 cases currently. This was, Mr. Kelley said, in line with the bureau's new emphasis on "quality over quantity." It's not every day that an agency of government announces the virtual abolition of an activity, and the significance of Mr. Kelley's announcement cannot be overemphasized, for it represents further evidence that the FBI is emerging from the dark shadow of its past.

But it ought not to be forgotten that Mr. Kelley's announcement is also a stark indictment of that past. His very use of the words "quality over quantity" in describing the elimination of practically all domestic intelligence cases tends to confirm what many had suspected about the bureau's activities: that the FBI had become a bureaucracy in relentless pursuit of political groups that gave top FBI officials ideological or social offense.

And nothing better illustrates this point than the saga of the FBI and the Socialist Workers Party. It may never be known or understood what aroused the interest of J. Edgar Hoover's FBI in the SWP back in 1938. One might guess that it was the inevitable result of a time of great concern about communism, socialism and "isms" generally. Still nothing can justify or excuse the infiltration, bugging and harassment of a legitimate political party in the manner of the FBI operation. That the FBI enterprise lasted for 38 years and was closed down by the Justice Department only two weeks ago defies all understanding.

To this day, the FBI's justification for this affront to the democratic process has not been made public. No particular crime was alleged, no violence on the part of the SWP was suggested, and no evidence of espionage was brought forward as far as we know. In short, none of the reasons a police agency should have for being interested in a political group appears to have played any part in the FBI's decision.

Nevertheless, the FBI had 1,600 informers in the SWP over those four decades, and 66 of them were still functioning in the party at the time the Justice Department finally decided enough was enough. The SWP has brought a $40 million lawsuit against the FBI and others associated with the campaign against the party. In one poignant paragraph, the lawsuit says that the party has been so thoroughly infiltrated that it is impossible for its leaders to tell when some aspects of the party's work might have been directed by FBI infiltrators.

Within the FBI, there appears to have been no brakes and no place where the effort was evaluated or where some rigorous standard was set for what constituted a proper use of agency manpower. Surely any such review at any point along the way in nearly 40 years might have suggested to someone at the top of the agency that perhaps it would do well to shut down the Socialist Workers desk.

Instead, something quite different appears to have happened: What was done to the SWP was done to others. By the mid-1960s, that kind of operation was standard operating procedure, and it even had a name of its own, COINTELPRO, standing for counter-intelligence program. The program had as its major and enduring target the Communist Party, of course, but it soon came to include many others. The same slovenly standards for what should be a target of government attention applied to all—they needed only to have offended some FBI standard of conduct, or to have had the name "black" or "liberation" in their title. Some had shown violent tendencies, but many, if not most, had not.

Regardless, they were spied upon, had their mail covered, their phones tapped, their meetings bugged. They became the victims of government-sponsored pranks and dirty tricks, some quite deadly. As far as anyone can tell, the biggest intelligence yield from the FBI's labors in the Socialist Workers' vineyard was a great deal of intelligence, if we can use that word, on the sex lives of SWP members, stuff that is no business of the FBI.

As Mr. Kelley's Senate testimony suggests, there is a great struggle going on to clean up the FBI and make it a police agency again and not a malevolent busybody. That effort is laudable and necessary. But those files of dirty information about members of the SWP and other groups should have been destroyed long ago. An FBI task force at the Justice Department is now in the process of studying the accumulation of such files to determine their future disposition. Where the files contain information about the personal lives of individuals having no bearing on crimes and law enforcement, that material should be destroyed—period. This kind of information has a great potential for harm—and virtually no potential for good.

Others have obligations too. Those of us who were pleased to leave all the crime-busting and Red-chasing to the FBI without asking what they were doing can see now why citizens should continue to show an active interest in what government does in our name—and what Congress does on our behalf. The FBI had so many friends in Congress it never had to give any real account of itself. The bureau has said that it sent reports to the various Attorneys General over the years describing COINTELPRO. Practically all living former Attorneys General express surprise at that, claiming to have heard little or nothing of the sort of thing now coming out. That is not good enough. Those responsible in the executive branch should be put on notice that the public expects them to know what the government's police agencies are doing. Not knowing, in these situations, is not a matter of mere ignorance, it is a matter of gross negligence.

Office of the Attorney General
Washington, D. C. 20530

JUL 30 1976

JUL 27 1976

Honorable Bella S. Abzug, Chairwoman
Government Information and Individual
Rights Subcommittee
Committee on Government Operations
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Chairwoman:

This is in response to your letter of June 22, 1976, regarding the efforts of the Office of Professional Responsibility to notify those individuals who were the subjects of the COINTEL program of the Federal Bureau of Investigation.

Nineteen notification letters have thus far been forwarded to the United States Marshals Service for delivery to those who were subjects of COINTELPRO. These 19 are broken down as follows: four were subjects of the "New Left" COINTELPRO, 11 of the "Black Extremist" COINTELPRO, three of the "White Hate" COINTELPRO, and one of the "Communist Party USA" COINTELPRO. Seven actions are now being researched for current addresses of the subjects and will be delivered to the Marshals Service shortly.

The Review Committee has determined that notification is inappropriate in 71 instances. These determinations may be categorized as follows: in 10 instances, no action was actually implemented; in 45 instances, it was decided that no person was harmed; in 27 instances, the "target" was a group; in three instances, the "persons" were already aware of the action; in four instances, it was determined that the Bureau's action was proper; in one instance, the documents evidencing the action are and should remain classified; in two instances, notification would necessarily reveal the identities of Bureau informants; and, in one instance, it was not possible for the Committee to determine whether an action was implemented. Please note that the categorical breakdown of criteria totals 93 and applies to only 71 "targets." This is due to the fact that in certain instances more than one reason or criterion was applicable.

On June 22, the Review Committee referred 11 actions concerning which there was disagreement among the Committee members to the Advisory Committee for resolution. The techniques employed in these actions were typical of those used in the COINTEL programs and resolution of the areas of disagreement will permit more expeditious notification decisions by the Review Committee in other actions.

In seven actions, the Committee determined that notification is not possible because no current address is available.

If an individual has made a request pursuant to the Freedom of Information or Privacy Acts, all COINTELPRO documents pertaining to that individual are referred to the Bureau's Freedom of Information and Privacy Unit for processing pursuant to his request. One individual has already been furnished COINTELPRO documents in this manner. This method of operation was chosen because I regard the notification program as totally distinct from Freedom of Information or Privacy Act requests. Please note that the enclosed copy of the notification letter makes no mention of either Act.

I am unable to advise you of how requests for further information have been handled as there have not yet been any replies to the dispatched notifications. When, however, requests for further information are received, all documents including initiating, approving, and supplementary memoranda will be released to the COINTELPRO subject, with excisions as appropriate, to protect the privacy interests of third parties and the identity of informants. If necessary, summaries of the information contained in these documents will be prepared and released to the subjects. Although no such instances have yet been discovered, it is possible that excisions may be necessary in some actions to protect sensitive techniques currently being utilized in legitimate counterintelligence investigations.

I trust the foregoing is of assistance to you and the Subcommittee.

Sincerely,

Edward H. Levi
Attorney General

PROPOSED COINTELPRO NOTIFICATION LETTER

Dear _____:

A review of Federal Bureau of Investigation files ordered by the Attorney General indicates that you may have been affected by an FBI counter-intelligence program in _____.

If you would like to receive more information concerning this matter, please send a written request to me specifying the address to which you want this material mailed.

Sincerely,

MICHAEL E. SHAHEEN, JR.
Counsel, OPR

(Office of Professional Responsibility Letterhead)

June 22, 1976

Honorable Edward H. Levi
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

This is to request that you supply the subcommittee with a report on the activities of the Office of Professional Responsibility concerning notification of individuals who were subject to the COINTEL program.

We would appreciate knowing the number of people notified to date, the categories of individuals who have been notified, the number of individuals not notified because a determination has been made that there was no harm or that they are already aware of COINTEL, any difficulties encountered in effecting notification, and any other information which may be useful to the subcommittee concerning your notification effort.

We would also appreciate having a sample copy of the letter which your office is sending and a statement on your practice regarding requests for additional information received from individuals who have been notified. Specifically, we are interested in knowing how Freedom of Information or Privacy Act requests are handled by the Department after an individual has been notified by your office that he or she was subject to the COINTEL program.

I want to join in the request made by my colleague, Hon. John Conyers, Jr., that in addition to providing notification to certain individuals, notice be provided to organizations as well.

If you have any questions concerning this matter, please contact Timothy Ingram or Theodore Jacobs of the subcommittee staff.

Sincerely,

BELLA S. ABZUG
Chairwoman

cc: Hon. John Conyers
Michael E. Shaheen, Counsel
Office of Professional Responsibility
Department of Justice

TJJ:TI/mf

APPENDIX 6.—MATERIALS RELATING TO MORATORIUM ON DESTRUCTION OF DOCUMENTS BY INTELLIGENCE AGENCIES

CIA ABOUT TO DESTROY FILES

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from New York (Ms. ABZUG) is recognized for 15 minutes.

Ms. ABZUG. Mr. Speaker, I am deeply disturbed that we may be about to witness the destruction by the intelligence agencies of records of their misdeeds and blunders—making it impossible to evaluate those agencies' activities.

I insert in the RECORD below a letter released today by the minority leader of the Senate, HUGH SCOTT. The letter is dated June 2, 1976, and is from the Director of the Central Intelligence Agency, George Bush. Mr. Bush asks that the Senate leadership lift the present moratorium on the destruction of intelligence-related documents so that the CIA may destroy "records which were collected and maintained by the Agency and which were subject to investigation by the Rockefeller Commission and the (Senate) Select Committee."

The CIA's proposed destruction plans are so broad, that they would include the destruction not only of documents inspected by Select Intelligence Committee investigators "on loan" and returned to the CIA, but documents "subject to investigation" which in fact were never examined by congressional investigators.

The CIA has an additional self-interest in destroying these documents. A number of cases brought by civilians spied upon by the Army in the late sixties were thrown out of court for lack of evidence because the Defense Department had destroyed files in 1971. Similarly, CIA might avoid litigation by destroying the basis of potential suits.

I also insert a letter dated April 23, 1976, from The Deputy Secretary of Defense to Senator Church on this subject.

The Government Information and Individual Rights Subcommittee, which I chair, is presently considering my bill, H.R. 12039. This measure would require that those who were the subjects of such programs as the FBI's COINTELPRO, the CIA's CHAOS, FBI and CIA burglaries and mail openings, National Security Agency cable interceptions, and the Special Service Staff of the IRS be notified that they were subjects and have files, told of their rights under the Freedom of Information Act and the Privacy Act, and afforded the option of having the illegally gathered information destroyed.

George Bush, Director of the CIA, is well aware of our active consideration of this legislation, since he testified on it before the subcommittee only a few weeks ago. Mr. Bush, anxious to have the CIA's unlawful activities dead, buried, and forgotten as soon as possible, wants to destroy the records of such programs as CHAOS, mail opening, and burglaries without any notification to the subjects. Apparently fearful that Congress will perform its legislative functions under the Constitution and enact the notification legislation. Mr. Bush has asked Senators MANSFIELD and HUGH SCOTT to lift the moratorium on records destruction that was instituted when the Senate Select Committee on Intelligence began its investigation. Of course, Mr. Bush knows full well that if he goes ahead with his plans, a notification law will be moot as to the CIA, and the CIA's victims will never know of their status as such.

This attempted end run will, if successful, wholly subvert the purpose of H.R. 12039 and the entire legislative process. I might add that it will hardly do a great deal to restore public confidence in the CIA in particular or the executive branch in general.

Instead of destroying the evidence in the dead of night, the CIA should—for once—trust to the constitutional processes of this Nation and allow the elected representatives of the people to work their will. To do otherwise will only reinforce the popular image of the agency as a secret and lawless entity.

The text of Mr. Bush's letter to Senator SCOTT, the Defense Department letter, and a relevant article from the May issue of First Principles follow:

CENTRAL INTELLIGENCE AGENCY,
Washington, D.C., June 2, 1976.

HON. HUGH SCOTT,
U.S. Senate, Office of the Minority Leader, Washington, D.C.

DEAR MR. SCOTT: On January 27, 1975, following adoption of S. Res. 21 creating the Select Committee on Intelligence, you and Senator Mike Mansfield requested that the Central Intelligence Agency "not destroy, remove from [its] possession or control, or otherwise dispose or permit the disposal of any records or documents which might have a bearing on the subjects under investigation, including but not limited to all records or documents pertaining in any way to the matters set out in section 2 of S. Res. 21."

In response to this request, the Agency placed in effect a complete moratorium on the destruction of records, including normal administrative records scheduled for routine destruction.

The purpose of this letter is to advise you that it is our intention to proceed with destruction of records, now that the Select Committee has completed its investigation and issued its final report. We have so advised Senator Church.

Along with the backlog of routine administrative records, the Agency will destroy records which were collected and maintained by the Agency and which were subject to investigation by the Rockefeller Commission and the Select Committee. The Agency is required to destroy much of this latter material by the Privacy Act of 1974 (P.L. 93-579) and by Executive Order 11905. Of course, all records destruction will be fully consistent with other applicable laws, Presidential directives, and the requirements of pending litigation and Justice Department investigations.

I trust you agree that this action is now necessary and appropriate, and I would appreciate your confirmation of this understanding.

I am sending a duplicate of this letter to Senator Mike Mansfield.

Sincerely,

GEORGE BUSH,
Director.

THE DEPUTY SECRETARY OF DEFENSE,
Washington, D.C., April 23, 1976.

HON. FRANK CHURCH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CHURCH: Last January 27, 1975, Senators Mansfield and Scott, in their capacities as Majority and Minority Leaders, wrote to the Secretary of Defense requesting that Department of Defense components not destroy, remove from their possession or control or otherwise dispose of any records which conceivably might relate to the subject matter of Senate Resolution 21, establishing the Senate Select Committee.

As you are aware, the Secretary of Defense immediately responded to this request by placing a strict moratorium on the destruction of a wide range of intelligence or intelligence related, counterintelligence and investigative records. This resulted, we believe, in the preservation of all essential records of interest to the Senate and House Select Committees. However, it has also resulted in our accumulation of a vast body of extraneous material and records which ordinarily would have been disposed of under normal records disposition schedules. For example, the moratorium has had the unfortunate result of investigative files on applicants for employment being retained in excess of the one year period ordinarily applied to such files when an applicant is not appointed. There are numerous other examples of various kinds of transitory material and temporary files being held until the moratorium is lifted.

Now that the Senate and House Select Committees have completed their fact-finding, we propose that the moratorium on the normal destruction of these intelligence and intelligence-related documents be ended.

It would be understood that no records relating to pending litigation, or to any outstanding requests for records from congressional committees, would be destroyed but rather that these records would in the normal course of business be preserved. On the other hand, we would return to prior procedures for the normal disposition and destruction of records which no longer have utility, or which have no archival value, under established records disposition schedules approved by the Archivist of the United States.

Regarding the materials provided to your Committee by the National Security Agency (NSA) on the so-called Watch List, I have instructed NSA to turn over to the Office of the Principal Deputy Assistant Secretary of Defense (Intelligence) all such materials still held by NSA. Consequently, I request that those Watch List materials which the Committee does not intend to retain be returned to the above office rather than to NSA.

A letter from Senators Mansfield and Scott rescinding their request of last January 27, 1975, would be deeply appreciated. We attach for your possible use a proposed joint declaration rescinding the request for the preservation of records, it being understood that certain essential and identified records would be preserved in any event.

Your consideration of this request will greatly assist us in the day-to-day operations of the Department of Defense.

Sincerely,

ROBERT ELLSWORTH.

Attachment.

HON. DONALD RUMSFELD,
Secretary of Defense,
The Pentagon,
Washington, D.C.

DEAR SECRETARY RUMSFELD: Last January 27, 1975, we wrote your predecessor, Secretary Schlesinger, requesting the Department of Defense to impose an embargo on the destruction, removal, or other disposition of

records relating to the inquiry to be made as a result of Senate Resolution 21, which created the Senate Select Committee to Study Intelligence Operations of the United States Government.

We are pleased that the Department responded promptly and affirmatively to our request at that time and that essential records have been preserved.

The important work of the Select Committee now being completed, it is appropriate that various elements of the Department of Defense end the moratorium on the destruction of intelligence or intelligence-related records, and that normal records disposition schedules and procedures be reinstated. It is understood that records which are of continuing interest to congressional committees, or those relating to pending litigation and other important records of archival value will be preserved.

Sincerely yours,

HUGH SCOTT,
Republican Leader.
MIKE MANSFIELD,
Majority Leader.

[From First Principles, May 1976]

ILLEGAL INTELLIGENCE PROGRAMS: NOTIFYING THE VICTIMS

(By Wendy Watanabe and Christine M. Marwick)

There is now an extensively documented record of illegal surveillance and harassment carried out by the intelligence community, yet many of the victims remain unaware that they were the subjects of such programs. As a step toward remedying the effects of its own programs, the intelligence community could notify the targets of its mail openings, disruption tactics, warrantless electronic surveillances, burglaries, and other discredited programs, and advise them that they have rights under existing laws—the Freedom of Information Act provides access to files, the Privacy Act allows the amending of inaccurate and irrevelant records, and, on the basis of what is learned under these acts, victims could consider suing for damages and additional release.

Given this situation, where does the government currently stand on the question of notification?

THE CHIEF EXECUTIVE: PRESIDENT FORD

The Office of the President is apparently uninterested in the question. On October 30, 1975, the American Civil Liberties Union, the Center for National Security Studies and five other organizations sent a joint letter to President Ford requesting that he take the initiative and notify those individuals who had been victims of programs and advise them of their rights in court.

President Ford has not yet responded to the letter, nor has he publicly discussed the issue of notification.

THE DEPARTMENT OF JUSTICE: ATTORNEY GENERAL LEVI

Attorney General Levi has been the first executive branch official to do something about the problem of notification. On April first, Levi announced the establishment of a special review committee to notify some subjects of COINTELPRO activities. Set up within the Justice Department's Office of Professional Responsibility, the "COINTELPRO Notification Program" includes the following policies:

Subjects of improper actions which may have caused actual harm should be notified; doubts should be resolved in favor of notification.

Those individuals who are already aware that they were subjects of COINTELPRO will not be notified.

In each case, the manner of notification should protect the subject's right to privacy.

Notification should be given as the work of the committee proceeds, without waiting for the entire review to be completed.

Where appropriate, the committee should refer matters to the Criminal or Civil Rights Division for disciplinary action.

No departure from these policies can be made without the express approval of the Attorney General.

CONGRESS: THE HOUSE

Rep. Bella Abzug, Chairwoman of the House Subcommittee on Government Information and Individual Rights, introduced a notice bill (H.R. 12039) on February 24, 1976 and has held hearings on the bill. In opening the hearings, she observed that the Department of Justice's decision to notify COINTELPRO victims is "far too narrow in scope and purpose"—COINTELPRO was only one of many documented programs which violated the rights of Americans. And while a notification program limited to COINTELPRO victims might be seen as an experiment, in itself it does nothing to respond to the problems of the victims of other extensive programs, such as the CIA's Operation CHAOS, illegal wiretaps, mail opening, or the IRS Special Services Staff. These latter programs are covered by the Abzug bill.

The Subcommittee took testimony from Director of Central Intelligence George Bush on April 28th, Bush opposed a notification program, maintaining that it would be impossible to identify and locate the people involved, and "simply unnecessary" because the volume of requests under the Freedom of Information and Privacy Acts indicates that the public is already aware of its right to access. But Bush did not deal with the problem that the records contain information on many people who would not have expected a CIA file on them, or who would hesitate to open a file under the FOI/PA when the agency may not have an investigatory file on them.

The May 11th testimony from IRS Commissioner Donald C. Alexander and Deputy Assistant Secretary of Defense David O. Cooke argued that the Privacy Act amendments requiring notification were impractical, expensive, time consuming, and in conflict with existing law. Cooke also faulted the amendments for being overboard—they would open investigative files to foreign nationals and "jeopardize our intelligence efforts."

Further hearings, from witnesses favoring rather opposing notification, are planned for June 3rd.

CONGRESS: THE SENATE

The Senate Select Committee on Intelligence Activities has also advised extending Attorney General Levi's COINTELPRO notification program, and recommended in Book II of its Fnal Report that the government take responsibility for notifying all targets of illegal intelligence programs:

"Recommendation 90. The Freedom of Information Act (5 U.S.C. 552(b) and the Federal Privacy Act (5 U.S.C. 552(a)) provide important mechanisms by which individuals can gain access to information on intelligence activtly directed against them. The Domestic Intelligence Recommendations assume that these statutes will continue to be vigorously enforced. In addition, the Department of Justice should notify all readily identifiable targets of past illegal surveillance techniques, and all COINTELPRO victims, and third parties who had received anonymous COINTELPRO communications, of the nature of the activities directed against them, or the source of the anonymous communication to them." (Book II, p. 336)

CONCLUSION

Given what we now know about the programs of the intelligence agencies, it is a logical step for the government to assume responsibility and institute a program for accountability. Notifying the subjects of such programs is a beginning; no one should have to guess whether he or she was the object of discredited government programs.

United States Senate
SELECT COMMITTEE ON INTELLIGENCE
(PURSUANT TO S. RES. 400, 94TH CONGRESS)
WASHINGTON, D.C. 20510

June 21, 1976

JN 24 1976

Honorable Bella S. Abzug
Chairwoman
Government Information and Individual
Rights Subcommittee
Rayburn House Office Building B-349-B-C
Washington, D. C. 20515

Dear Mme. Chairwoman:

Thank you for your letter of June 16, concerning the moratorium on the destruction of intelligence agencies' records. I have written to the other affected agencies to request formally the extension of the moratorium.

With kind regards,

Aloha,

Daniel K. Inouye
Chairman

225-3741

NINETY-FOURTH CONGRESS

Congress of the United States

House of Representatives

GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C
WASHINGTON, D.C. 20515

June 16, 1976

Honorable Daniel K. Inouye
Senate Select Committee on Intelligence
442 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Inouye:

I was very pleased to learn of the Select Committee's recommendation of June 9 "that there should be a moratorium on the destruction of [intelligence agencies'] records for approximately six months and that notice should be given of the moratorium on destruction so that those who may wish to take legal or other action may do so."

This should allow interested parties and the appropriate congressional committees adequate opportunity to review the records intended for destruction by the intelligence agencies. This Subcommittee, which has jurisdiction over the National Archives and Records Service, will be examining closely the adequacy of existing government records destruction and retention policies. I would suggest that a dialogue on these issues between our committees would be beneficial to both.

I am told by the office of Senate Minority leader Hugh Scott that only one letter has been sent notifying the executive agencies of the extension for six months of the intelligence records moratorium. This was the June 10 letter signed by Senators Mansfield and Scott to CIA Director George Bush. To date, no letters have been sent to the Departments of Justice, Treasury, or Defense, or other agencies with intelligence components, notifying them of the extension of the moratorium. I would respectfully suggest that letters similar to that

of the June 10 letter to the CIA be forwarded to the affected agencies so that they will be on notice not to destroy intelligence related files.

With kind regards,

Sincerely,

BELLA S. ABZUG
Chairwoman

cc: Hon. Mike Mansfield, Majority Leader
Hon. Hugh Scott, Minority Leader
Hon. Howard H. Baker, Jr., Ranking Minority
Member, Sen. Select Committee on Intelligence

NINETY-FOURTH CONGRESS

Congress of the United States

House of Representatives

GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C
WASHINGTON, D.C. 20515

June 4, 1976

Honorable Daniel Inouye
Chairman
Senate Select Committee on Intelligence
442 Russell Senate Office Building
Washington, D.C.

Dear Senator Inouye:

I am deeply concerned that valuable documents relating to this nation's intelligence activities will be lost forever to investigators and historians, should abrupt approval be given to agency requests to lift the present moratorium on files destruction.

The letter to the Senate Majority and Minority Leaders of June 2, 1976 from Central Intelligence Agency Director George Bush (attached) both illustrates the problem, and its immediacy. Mr. Bush bluntly states that, "Along with the backlog of routine administrative records, the Agency will destroy records which were collected and maintained by the Agency and which were subject to investigation by the Rockefeller Commission and the Select Committee." The proposed destruction plan of CIA is so broad that it could include the destruction not only of documents inspected by Church Committee investigators and returned to the CIA, but documents "subject to investigation" which in fact were never examined by the Committee or its members.

In his letter, Mr. Bush does not provide any itemization of the materials he intends to dispose of. He keys the destruction plans to records falling within the scope of the Rockefeller Commission (directed by the President "to determine whether any domestic CIA activities exceeded the Agency's statutory authority") and section 2 of S. Res. 21, establishing the Church Committee.

As you are aware, the Senate directed the original Select Committee on Intelligence Activities under S. Res. 21, subsection 14 of section 2, for example, to determine "The extent...of overt and covert intelligence activities in the United States and abroad." If Mr. Bush is now given free license to destroy all files falling within the ambit of section 2 of the Resolution, the new Standing Select Committee on Intelligence will be greatly hampered in its oversight efforts. Subsection 13 of section 2 also directed the Church Committee to determine "Whether there is unnecessary duplication of expenditure and effort in the collection and processing of intelligence information..." Surely the Director of Central Intelligence should not be permitted to destroy these related papers without further elaboration.

A spokesman for the Senate Intelligence Committee is quoted in this morning's Washington Post (Friday, June 4) as saying: "There's no objection from this source because this committee has gone out of business...We assume there'll be a record copy kept (of non-routine files)." There is nothing in the Bush letter to suggest that copies of documents slated for destruction will be saved. Conversations my staff had with CIA legislative counsel last night indicated that records would be destroyed, with no provision for the keeping of duplicates or historical tapes.

Mr. Bush appeared before this Subcommittee on April 28 of this year to testify on my bill, H.R. 12039, which would require agencies to notify the subjects of CIA's CHAOS program, FBI's COINTEL operations, and certain other improper federal surveillance activities. The following exchange took place at the hearing between Representative Michael Harrington of the Subcommittee and CIA legislative counsel George Cary (transcript, pages 47-8):

> Mr. Harrington. Will (the CHAOS records) exist if the Director is taken at his word and there is a destruction after the moritorium ends?/ Will it exist in any fashion on computer lists, separate or not, so that it could be reconstituted?
>
> Mr. Cary. It will not exist.
>
> Mr. Harrington. There will be no record at all in any fashion, in any form that will allow your Agency in any one of the programs -- not limiting it to CHAOS -- to allow there to be a retrieval or reconstruction of the information gathered on these people?

> Mr. Cary. I am here under oath and I want to be sure we have no misunderstanding. There is some information which we keep on American citizens which is entirely proper information, and which starts from employment investigations, as information with respect to contractors with the Agency, and things of that sort. Aside from those areas which have been described in law and regulation as proper for the Agency, we fully intend to expunge these records completely.

The assumption implicit in Mr. Bush's letter is that since many of these documents have been reviewed by one or two investigators, they can be of no further use or interest to others. This is simply not the way investigators -- or historians, for that matter -- go about their task. A bit of information overlooked by one researcher may have tremendous importance for another who is approaching the subject with different questions or knowledge. Facts build on themselves. A review of documents skimmed by Church Committee staffers months ago may, in light of the Committee's recently published final reports, assume a new significance in an on-going look at agency operations. Furthermore, the examination by a scholar fifty years from now of an agency's raw files may spark an entirely different emotional and intellectual impact than a reading of a dry congressional report summarizing those files.

Director Bush assures us that "all records destruction will be fully consistent with other applicable laws, presidential directives, and the requirements of pending litigation and Justice Department investigations." The only major pending litigation involves the CIA CHAOS and mail interception programs. Presumably, all other CIA documents which were "subject to investigation" could be disposed of -- including data on covert actions, foreign assassination attempts, the Huston Plan, relationships with U.S. reporters, and the use of religious groups, and academic and voluntary organizations.

The "applicable laws" referred to by Mr. Bush would include the records disposal provisions of Title 44, Chapter 33 of the U.S. Code. No government document may be destroyed by a federal agency unless its destruction is included in a records disposal schedule approved by the Archivist of the United States. Deputy Assistant Attorney General Mary Lawton of the Office of Legal Counsel told this Subcommittee on April 28 that the resumption of the FBI's records disposal program, which was approved by the Senate leadership and the Senate Select Committee within the last two months,

"involves only those records approved for destruction by the National Archives and Records Service under the established Records Control Schedule."

This Subcommittee has oversight jurisdiction over the National Archives and Records Service. From our experience, NARS is simply not equipped to oversee or to make detailed judgments regarding which intelligence files should be preserved because of possible future interest to researchers or congressional investigators. Officials of the Archives acknowledge this.

The Records Disposition Division of the Archives' Office of Federal Records Centers has a staff of about ten people. The appraiser with responsibility for the FBI, for example, also is responsible for the disposition of all federal judicial records, and the files of HUD, Justice, the D.C. Government, SEC, Civil Service, the Army, the Environmental Protection Agency, and the Federal Home Loan Bank Board -- with back-up responsibility for four other agencies. On March 26, 1976, he approved, and the Archivist subsequently signed, authorization for the destruction of "Closed files of the Federal Bureau of Investigation Field Division containing investigative reports, inter- and intra-office communications, related evidence...collected or received during the course of public business in accordance with the FBI investigative mandate."

The appraiser's approval was based upon a review of a 12-page 1969 records retention plan for the FBI, which states that "field records generally are not complete and need not be retained any longer than administrative needs require access to backup material."

The Government Accounting Office Report on FBI "Domestic Intelligence Operations" has commented on the failure of the FBI in adequately controlling Field Office practices on the distinction between preliminary inquiries and full-scale investigations, with the resulting failure to control proper reporting to Headquarters. Recent press reports have also noted the lack of availability of files and records presumably found in the New York City Field Office to the Justice Department lawyers defending the Socialist Workers Party case in New York. The New York Times reported on April 30 that Mr. J. Stanley Pottinger is said to believe that it was "possible" that evidence to contradict certain findings contained

in his report to the Attorney General on the FBI's investigation into the King assassination "might turn up in the 2,500 files, believed to contain more than 200,000 documents, in FBI field offices around the country."

The Archives appraiser told the Subcommittee staff he was unaware of these reports, and acknowledged it was quite possible that FBI records, as those involving the King assassination, might be destroyed under the disposal schedule. But he contended that with the large volumes of paper he was dealing with, across-the-board approvals were the only kind feasible.

As you know, the moratorium on intelligence-related files destruction is not legally binding. It resulted from a request by the Senate leadership in late January, 1975, which the agencies were asked to observe. (A copy of the moratorium letter to GSA Administrator Arthur Sampson is enclosed.) It was tied to the investigation of the Church Committee and S. Res. 21. Now that that Committee has expired, it is to be expected that all the affected agencies will ask to be removed from its provisions. Typical is the April 23, 1976 letter from Deputy Defense Secretary Robert Ellsworth (attached) requesting that the moratorium be lifted for all DoD materials.

S. Res. 400, in establishing the Senate Committee on Intelligence, does provide in section 10 that the records in the possession of the Church Committee shall be turned over to the new standing Committee. But many documents which were accepted by the Church Committee on a "loan" basis have been returned to the agencies. The Resolution does not address itself to the question of the disposition of these materials, nor of those records viewed by Committee investigators which were never removed from agency files or transferred to the Senate.

Mr. Bush in his letter says that the CIA "is required" to destroy much of this material under the provisions of the Privacy Act of 1974 (5 USC 552a) and Executive Order 11905.

The Privacy Act does prohibit an agency from maintaining systems of records on individuals which are inaccurate, irrelevant to the statutory purpose of the agency, or outdated. An agency is also prohibited from keeping a record "describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within

the scope of an authorized law enforcement activity." (Section (e) (1), (5), and (7) of the Act.) Mr. Bush glosses over the distinction which the Act allows, between the screening of impermissible personal data, and the agency policy documents which approved the gathering of such information. The Privacy Act clearly states that access to records otherwise available under the Freedom of Information Act shall not be restricted. The Privacy Act's coverage is limited to personal data, the release of which would constitute a clearly unwarranted invasion of personal privacy. In addition, Deputy Assistant Attorney General Lawton has noted: "As we read the Privacy Act, it prohibits agency maintenance of certain records but permits the Archives to maintain those portions of the records it finds to be of historic significance."

Mr. Bush's tortured reading of Executive Order 11905 appears to be that the prohibitions listed in the order against future agency actions require that documents relating to past activities, now restricted, be destroyed. The order simply does not raise the issue of records, nor does this interpretation appear consistent with its reform intent.

I would urge that no approval be given the CIA's request -- nor the request of any other agency -- to destroy materials covered by the Senate leadership moratorium, until fuller consideration can be given the matter. At the very least, a full and detailed itemization of the records proposed for destruction should be provided by each agency. The impact on the new Intelligence Committee could be enormous, and I would urge that the Committee in its organizational meetings formally consider the issue. I would also respectfully suggest that the leadership or the Committee invite the Archivist of the United States to outline his responsibility for records preservation and the steps he will take to insure the retention of papers of historical interest.

It would be a tragic mistake to approve sweeping requests for records destruction at this time. The new Select Intelligence Committee should be given an opportunity first to choose its staff, and to thoroughly appraise its objectives and the investigative areas it may wish to pursue. An effort should be made then to reduce the legitimate storage burdens of a large volume of agency administrative records, travel vouchers, applicant files, and the like. The point is that the intelligence agencies have a decided

self interest in disposing of embarrassing and damning evidence about themselves. Some arrangements must be made to allow outside oversight of any planned records disposal by those familiar with the contents of the documents and the nature of agency filing systems. Some of the alternatives might include a special panel of historians to advise the Archivist; a task force of Senate Intelligence staff members assigned to report back to the Select Committee; or consultation with the Justice Department prosecution force, with an evaluation by the intelligence oversight advisory committees and/or the Government Accounting Office.

If you or your staff have further questions please contact Subcommittee Staff Director Timothy Ingram at 225-3741.

Sincerely,

BELLA S. ABZUG
Chairwoman

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

2 June 1976

Honorable Hugh Scott
United States Senate
Office of the Minority Leader
Washington, D.C. 20510

Dear Senator Scott:

On 27 January 1975, following adoption of S. Res. 21 creating the Select Committee on Intelligence, you and Senator Mike Mansfield requested that the Central Intelligence Agency "not destroy, remove from [its] possession or control, or otherwise dispose or permit the disposal of any records or documents which might have a bearing on the subjects under investigation, including but not limited to all records or documents pertaining in any way to the matters set out in section 2 of S. Res. 21."

In response to this request, the Agency placed in effect a complete moratorium on the destruction of records, including normal administrative records scheduled for routine destruction.

The purpose of this letter is to advise you that it is our intention to proceed with destruction of records, now that the Select Committee has completed its investigation and issued its final report. We have so advised Senator Church.

Along with the backlog of routine administrative records, the Agency will destroy records which were collected and maintained by the Agency and which were subject to investigation by the Rockefeller Commission and the Select Committee. The Agency is required to destroy much of this latter material by the Privacy Act of 1974 (P. L. 93-579) and by Executive Order 11905. Of course, all records destruction will be fully consistent with other applicable laws, Presidential directives, and the requirements of pending litigation and Justice Department investigations.

I trust you agree that this action is now necessary and appropriate, and I would appreciate your confirmation of this understanding.

I am sending a duplicate of this letter to Senator Mike Mansfield.

Sincerely,

George Bush
Director

United States Senate
Office of the Majority Leader
Washington, D.C. 20510

February 7, 1975

NARS
REPLY DUE:

Honorable Arthur F. Sampson
Administrator
General Services Administration
Washington, D. C. 20405

Dear Mr. Sampson:

As you may be aware, the Senate is to conduct an investigation and study of government operations with respect to intelligence activities. The scope of the investigation is set out in S. Res. 21, a copy of which has been enclosed for your information.

We are writing to request that you not destroy, remove from your possession or control, or otherwise dispose or permit the disposal of any records or documents which might have a bearing on the subjects under investigation, including but not limited to all records or documents pertaining in any way to the matters set out in section 2 of S. Res. 21.

Additionally, we shall appreciate your cooperation in requesting the National Archives and Records Service to be alert to the provisions of the Resolution and not destroy records to which it applies, regardless of their age or the agency from which the destruction request is received.

Sincerely yours,

HUGH SCOTT, REPUBLICAN LEADER

MIKE MANSFIELD, MAJORITY LEADER

Enclosure

RECEIVED
FEB 12 1 25
'75

THE DEPUTY SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

APR 2 3 1976

Honorable Frank Church
United States Senate
Washington, D.C. 20510

Dear Senator Church:

Last January 27, 1975, Senators Mansfield and Scott, in their capacities as Majority and Minority Leaders, wrote to the Secretary of Defense requesting that Department of Defense components not destroy, remove from their possession or control or otherwise dispose of any records which conceivably might relate to the subject matter of Senate Resolution 21, establishing the Senate Select Committee.

As you are aware, the Secretary of Defense immediately responded to this request by placing a strict moratorium on the destruction of a wide range of intelligence or intelligence related, counterintelligence and investigative records. This resulted, we believe, in the preservation of all essential records of interest to the Senate and House Select Committees. However, it has also resulted in our accumulation of a vast body of extraneous material and records which ordinarily would have been disposed of under normal records disposition schedules. For example, the moratorium has had the unfortunate result of investigative files on applicants for employment being retained in excess of the one year period ordinarily applied to such files when an applicant is not appointed. There are numerous other examples of various kinds of transitory material and temporary files being held until the moratorium is lifted.

Now that the Senate and House Select Committees have completed their fact-finding, we propose that the moratorium on the normal destruction of these intelligence and intelligence-related documents be ended.

It would be understood that no records relating to pending litigation, or to any outstanding requests for records

From congressional committees, would be destroyed but rather that these records would in the normal course of business be preserved. On the other hand, we would return to prior procedures for the normal disposition and destruction of records which no longer have utility, or which have no archival value, under established records disposition schedules approved by the Archivist of the United States.

Regarding the materials provided to your Committee by the National Security Agency (NSA) on the so-called Watch List, I have instructed NSA to turn over to the Office of the Principal Deputy Assistant Secretary of Defense (Intelligence) all such materials still held by NSA. Consequently, I request that those Watch List materials which the Committee does not intend to retain be returned to the above office rather than to NSA.

A letter from Senators Mansfield and Scott rescinding their request of last January 27, 1975, would be deeply appreciated. We attach for your possible use a proposed joint declaration rescinding the request for the preservation of records, it being understood that certain essential and identified records would be preserved in any event.

Your consideration of this request will greatly assist us in the day-to-day operations of the Department of Defense.

Sincerely,

Robert Ellsworth

Attachment

DRAFT

...ble Donald Rumsfeld
Secretary of Defense
The Pentagon
Washington, D.C. 20301

Dear Secretary Rumsfeld:

Last January 27, 1975, we wrote your predecessor, Secretary Schlesinger, requesting the Department of Defense to impose an embargo on the destruction, removal, or other disposition of records relating to the inquiry to be made as a result of Senate Resolution 21, which created the Senate Select Committee to Study Intelligence Operations of the United States Government.

We are pleased that the Department responded promptly and affirmatively to our request at that time and that essential records have been preserved.

The important work of the Select Committee now being completed, it is appropriate that various elements of the Department of Defense end the moratorium on the destruction of intelligence or intelligence-related records, and that normal records disposition schedules and procedures be reinstated. It is understood that records which are of continuing interest to congressional committees, or those relating to pending litigation and other important records of archival value will be preserved.

Sincerely yours,

HUGH SCOTT, REPUBLICAN LEADER MIKE MANSFIELD, MAJORITY LEADER

NINETY-FOURTH CONGRESS

Congress of the United States

House of Representatives

GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C
WASHINGTON, D.C. 20515

May 14, 1976

Honorable Frank Church
Chairman
Senate Select Committee to Study Governmental
Operations with Respect to Intelligence Activities
Senate Office Building
Washington, D.C.

Dear Senator Church:

As Chairwoman of the House Government Operations Subcommittee on Government Information and Individual Rights, I have been concerned with the possible destruction of files and records held by various intelligence agencies when the current moratorium on destruction is lifted. As you will note from the copy of the enclosed statement which was entered into the Congressional Record on March 30, 1976, I wrote to each of the agencies involved in the moratorium to request that they continue to abide by the moratorium pending Congressional action on the matter. Although each of the agencies replied, in effect, that they would consult with the Congressional leadership and abide by Presidential directive and the mandate of law before resuming destruction, I am concerned that piecemeal handling of this matter will result in the permanent loss of important data needed for future Congressional oversight.

For example, Senators Mansfield and Scott, by letter dated March 24, 1976, released the Federal Bureau of Investigation from the moratorium with respect to certain records. I am concerned with this resumption of destruction by the FBI to a sufficient extent to have asked the General Accounting Office to monitor their program to insure that intelligence files are not destroyed. Another example giving rise to my concern is the enclosed letter from Deputy Secretary of Defense Robert Ellsworth to you dated April 23, 1976, requesting "that the moratorium on the normal destruction of these intelligence and intelligence-related documents be ended."

Within the past month, I have held hearings on a bill (H.R. 12039) which would require that notice be given to individuals who were subjects of certain programs and certain techniques utilized by the intelligence agencies. Obviously, notice is meaningless if the files and records in question have been destroyed. I have consequently obtained agreement from Director of Central Intelligence, George Bush, and Commissioner of Internal Revenue, Donald Alexander, not to dispose of the CHAOS and Special Service Staff files, respectively, until our consideration of H.R. 12039 is concluded. I am, however, not aware of what other files and records may be scheduled for destruction by these agencies when the moratorium expires.

I am writing to you now to request that you advise the agencies to continue the moratorium at least until the matter is dealt with by the new oversight committee which the Senate is scheduled to create shortly.

Sincerely,

BELLA S. ABZUG
Chairwoman

cc: William G. Miller

Enclosures

DESTRUCTION OF FILES OF ILLEGAL SURVEILLANCE AND OTHER ILLEGAL ACTIVITIES: ANNOUNCEMENT OF HEARING

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from New York (Ms. ABZUG) is recognized for 20 minutes.

Ms. ABZUG. Mr. Speaker, the Government Information and Individual Rights Subcommittee, which I chair, has been studying the maintenance, dissemination and ultimate disposition of files created as a result of such programs as CHAOS, COINTELPRO, IRS Special Service Staff, FBI and CIA mail openings, and NSA interception of wire communications. In addition, we have legislative and oversight jurisdiction over the Privacy Act of 1974.

In that connection, I have introduced H.R. 12039, which would require that individuals who were the subjects of such programs be informed of the existence of files on them and afforded the opportunity to require that such files be turned over to them or destroyed. H.R. 12039 is an expanded version of H.R. 169, which I introduced in January 1975.

By letter dated February 24, 1976, I also requested that the CIA, the FBI, the IRS, the NSA and other agencies having such material not destroy it on their own. To begin with, it is the subjects of the programs, not the agencies which unlawfully conducted them, who should have the right to determine the disposition of files collected unlawfully. In addition, it is important that the material, which undoubtedly includes considerable evidence of illegal activities by the agencies, not be destroyed before committees such as mine include their inquiries into these programs.

Today I received two letters from Attorney General Levi, one striking a positive note, the other quite disappointing. In the first, Mr. Levi informed me that, on the request of syndicated columnist Joseph Kraft, he has asked the National Archives to destroy the content of the electronic surveillance conducted against Mr. Kraft in 1969 on the ground that the continued maintenance of the information violates the Privacy Act of 1974. Specifically, Mr. Levi ruled that the keeping of the information violates the requirements that Federal agencies may only maintain records on individuals that are relevant, timely, accurate, and complete, and which do not describe how an individual expresses rights guaranteed by the first amendment.

The existence of the Kraft wiretap was made known by Watergate investigators, but there are many thousands of Americans who are not even aware that their Government opened their mail, tapped their phones, or otherwise had them under surveillance for doing nothing more than exercising their constitutional rights. These people have a right to be informed of the existence of the files on them so that they may exercise their rights to have the files amended or destroyed, and H.R. 12039 would go beyond Mr. Levi's position by requiring that they be so notified and informed of their rights.

Mr. Levi's second letter relates to the destruction of files generally. Now that the Pike committee has completed its work, albeit without its report having been made public, and the Senate committee chaired by Senator Church is about to conclude its investigation, the Congress is presented with the question of whether the moratorium which has been in effect on destruction of documents by the intelligence agencies should be extended.

In January 1975, Senators Mansfield and Scott requested that various agencies and departments not destroy or otherwise dispose of documents which might have a bearing on the work of the Senate and House Intelligence Committees.

The agreement reached by the Senate leadership with the various agencies will expire shortly, and I believe that Congress should address the question of the ultimate disposition of some of the sensitive files and records held by these agencies. I recently sent a letter to the Departments of State, Justice, Treasury, and Defense, and to the Central Intelligence Agency, requesting that the moratorium on destruction of files and records be extended until Congress has had an opportunity to act on legislation dealing with this matter. The text of a sample of the letter I sent and the responses of the agencies are appended following my remarks.

The replies I received to my letters to the agencies generally state that they have complied with their agreement, that they will "discuss the matter further" with the congressional leadership, and that any destruction will be done in accordance with Presidential order or as otherwise provided by law. The Treasury Department assures me that it has preserved the files and records relating to

its Special Service staff and the Secret Service has preserved its files and records relating to the assassination of John F. Kennedy. I assume, in the absence of evidence to the contrary, that every other agency has kept the files which comprise the subject of H.R. 12039.

Mr. Levi's second letter states that he will "shortly authorize the resumption" of the FBI's "routine destruction program." Mr. Levi also says that no "intelligence files" are to be destroyed. I do not question his good faith, but I suspect that we may have some differences as to what constitute "intelligence files," and that we may also differ on the extent to which the files which he does propose to destroy contain evidence vital to the investigatory efforts of the Government Information and Individual Rights Subcommittee and other committees of the Congress.

In light of these developments, the Government Information and Individual Rights Subcommittee will hold hearings on H.R. 12039, H.R. 169, and other matters relating to the disposition of the records of the agency activities in question, beginning on April 13, 1976. The hearing will be in room 2247 of the Rayburn Building and will begin at 10 a.m.

My letter and the agency response are appended:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., March 29, 1976.

Hon. BELLA S. ABZUG,
Chairwoman, Subcommittee on Government Information and Individual Rights, Committee on Government Operations, U.S. House of Representatives, Washington, D.C.

DEAR CHAIRWOMAN ABZUG: In light of your interest in the preservation of certain records of this Department, I thought it advisable to notify you of my request to the Archivist to dispose of certain materials relating to an electronic surveillance of Joseph Kraft in 1969.

Mr. Kraft has requested destruction of these records pursuant to subsection (d) of the Privacy Act of 1974, 5 U.S.C. 552a(d). I have determined that the records in question may not properly be maintained by this Department pursuant to that Act and must therefore be destroyed or, if of historical interest, transferred to the Archivist. As the attached form 115, submitted to the Archives notes, I am proposing that we destroy only the documents containing or summarizing the actual content of the surveillance, not the documents which relate to the initiation or termination of it. Much of the material has already been furnished to the Senate Select Committee and information concerning the incident is contained in the files. Thus, the historic fact of the occurrence of the surveillance will be preserved, not only in the files of this Department but also in the files of the Senate Select Committee.

In my view destruction of the files at this time fulfills my obligations under the Privacy Act and yet remains consistent with your earlier request.

Sincerely,

EDWARD H. LEVI,
Attorney General.

REQUEST FOR RECORDS DISPOSITION AUTHORITY

(See Instructions on reverse)

(Leave blank.)

Job No.: NC 1-65-76-2.

Date received: March 8, 1976.

Notification to agency: In accordance with the provisions of 44 U.S.C. 3303a the disposal request, including amendments, is approved except for items that may be stamped "disposal not approved" or "withdrawn" in column 10.

Date: Archivist of the United States.

To: General Services Administration, National Archives and Records Service, Washington, D.C. 20408.

1. From (agency or establishment): Department of Justice.
2. Major subdivision: Federal Bureau of Investigation.
3. Minor subdivision: Files and Communications Division.
4. Name of person with whom to confer: Mary C. Lawton.
5. Tel. ext.: 2059.
6. Certificate of agency representative: I hereby certify that I am authorized to act for this agency in matters pertaining to the disposal of the agency's rec-

ords; that the records proposed for disposal in this Request of ____ page(s) are not now needed for the business of this agency or will not be needed after the retention periods specified.

[X] A. Request for immediate disposal.

[ ] B. Request for disposal after a specified period of time or request for permanent retention.

C. Date: 3/8/76.

D. Signature of agency representative:

E. Title: Attorney General.

7. Item no.: 1.

8. Description of item (with inclusive dates or retention periods): Contents of sealed file which include 115 documents, 48 of which are original (some are classified Top Secret) and 67 duplicates. The contents were ordered removed from the general files of the Federal Bureau of Investigation by the Attorney General and sealed. The material relates to conversations overheard during a 1969 electronic surveillance.

The sealed file consists of transcripts of conversations and memoranda describing, summarizing and transmitting product of electronic surveillance. Documentation of the initiation, implementation and termination of electronic surveillance project is included in files that will be retained in the FBI in its approved Records Control Schedule. Continued maintenance of the records covered by this disposal request conflicts with the provisions of the Privacy Act of 1974, 5 U.S.C. 552a(e)(1), (5) and (7).

9. Sample or job no.

10. Action taken.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., March 29, 1976.

Hon. BELLA S. ABZUG,
Chairwoman, Subcommittee on Government Information and Individual Rights, Committee on Government Operations, U.S. House of Representatives, Washington, D.C.

DEAR CHAIRWOMAN ABZUG: You have asked me to have the Federal Bureau of Investigation refrain from destroying any material that might be useful to a future Congressional oversight committee. As you know the Bureau has, since the Senate leadership requested a moratorium on destruction of files January 27, 1975, refrained from destroying any material. It has done so in abundance of good faith, but the logistical burden of this policy has been very great. The Bureau, with the concurrence (enclosed) of Senators Hugh Scott and Mike Mansfield who made the 1975 request, intends to renew its routine destruction programs described in the attached memorandum.

You will notice that no intelligence files are sought to be destroyed. I believe the resumption of the routine destruction program—which is also consistent with Archival requirements—will in no way impede the responsibilities of Congressional oversight committees and will result in a considerable savings of money. I intend shortly to authorize the resumption of the destruction program.

Sincerely,

EDWARD H. LEVI,
Attorney General.

GOVERNMENT INFORMATION AND
INDIVIDUAL RIGHTS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., March 30, 1976.

Hon. EDWARD H. LEVI,
Attorney General of the United States,
U.S. Department of Justice,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: Thank you for your letter of March 29, 1976 in which you inform me of your request that the Archivist dispose of the content of the electronic surveillance conducted in 1969 on the columnist, Joseph Kraft.

I am gratified that you have taken this action, and want you to know that I agree with your interpretation of Sections (e) (1), (5) and (7) of the Privacy

Act. This decision, as far as I know, is the first interpreting these vital provisions of the Act.

On February 24, 1976, I introduced a bill, H.R. 12039, to provide that the subjects of several programs, including COINTELPRO, be informed of the fact that they were subjected to surveillance and giving them the opportunity of having the file on them destroyed. The programs or operations covered by my bill include mail openings, illegal entries, warrantless wiretaps, monitoring of international communications, and the programs known as CHAOS and the Special Service Staff of Internal Revenue, as well as COINTELPRO. I had previously, on January 14, 1975, introduced H.R. 169 to amend the Privacy Act to provide for expunging of certain files.

I intend to hold hearings on H.R. 169, H.R. 12039 and related matters involving records of these activities on April 13, 1976. If possible, we would appreciate having your testimony at that time. I would, of course, also appropriate having your support for the bills.

Sincerely,

BELLA S. ABZUG,
Chairwoman.

OFFICE OF THE MAJORITY LEADER,
Washington, D.C., March 24, 1976.

Hon. CLARENCE M. KELLEY,
Director, Federal Bureau of Investigation,
Washington, D.C.

DEAR MR. DIRECTOR: You will recall that we wrote to you on January 27, 1975, requesting "that you not destroy, remove from your possession or control or otherwise dispose of documents . . ." which might be pertinent to the investigation which was provided for by S. Res. 21. We are now advised by Senator Church, as Chairman, that this moratorium is broader than necessary at this time.

Accordingly, we rescind our request of January 27, 1975, to the end that you may resume the Bureau's routine records disposal program. Our understanding is that the files involved in that program do not relate to security and intelligence matters.

With appreciation for your cooperation, we are

Sincerely yours,

MIKE MANSFIELD,
Majority Leader.
HUGH SCOTT,
Republican Leader.

The ATTORNEY GENERAL,
Director, FBI,
U.S. Senate Select Committee on Intelligence Activities.

Enclosed for your approval and forwarding to the committee is a letterhead memorandum outlining the FBI's recommendation for the reinstitution of the Bureau's normal file destruction program. A copy of this letterhead memorandum is enclosed for your records. This letterhead memorandum is in response to Chairman Frank Church's request that the FBI obtain the concurrence of you in the reinstitution of this program. The request of Chairman Church was contained in his letter to me dated February 20, 1976. A copy of this letter is enclosed as well as a copy of my letter to Chairman Church dated January 27, 1975.

All of the FBI's file destruction programs are approved by the National Archives and Records Service as well as furnished to the Assistant Attorney General for Administration. The problems presented by the continuing retention of the materials are such that I ask that this matter be handled as expeditiously as possible.

MARCH 4, 1976.

U.S. SENATE SELECT COMMITTEE ON INTELLIGENCE ACTIVITIES

Reference is made to the letter of Chairman Frank Church to Honorable Clarence M. Kelley, Director, Federal Bureau of Investigation, dated February 20, 1976, which requested the Attorney General's concurrence in the FBI's reinstitution of the destruction of certain FBI documents and files.

By letter to the Director of the FBI dated January 27, 1975, from Senate Majority Leader Mike Mansfield and Minority Leader Hugh Scott, the FBI was advised of the U.S. Senate's intended investigation and study of intelligence activities by the FBI and other Government agencies. The scope of this investigation and study was described in Senate Resolution 21 of the 94th Congress.

The aforementioned letter specifically requested the FBI not to destroy or otherwise dispose of any records or documents which might have a bearing on the subjects under investigation or relating to the matters specified in Section 2 of Senate Resolution 21. That Section of the Resolution described the Senate's extensive interest in the domestic intelligence as well as foreign counterintelligence activities of Executive Branch agencies including the FBI.

In accommodation of that request, Director Kelly immediately issued instructions to all offices and divisions of the FBI establishing a moratorium on the destruction of all records of whatever description. In retrospect, the FBI now feels that the moratorium need not have been as all-encompassing as that, but this was done to assure that there could be no question of its intention to comply fully with the request with regard to the preservation of relevant records in which the Senate might develop an interest.

It is now more than one year since the inception of the moratorium on the FBI's regular records destruction program. For your information, the FBI's regular destruction program, as approved by the National Archives and Records Service and the Department of Justice, is designed to prevent retention of masses of records well beyond the period during which they may serve a useful purpose. Further, our records destruction program, as approved by the National Archivist, permits the destruction of those records which are deemed to no longer possess evidentiary, intelligence, or historical value. The moratorium, which was not expected to last as long as it has, has created substantial administrative burdens not only at FBI Headquarters but throughout the 59 field offices. The suspension of sound records management and file destruction practices in many areas is causing very substantial space and storage problems.

The FBI now proposes that that portion of its records destruction programs which do not pertain to or concern classifications of files which would fall within the general description of "security files" be reinstituted. Those files which would not be affected by the reinstitution of the file destruction program would include all files on domestic intelligence matters, extremist matters, racial matters as well as foreign counterintelligence matters. The files which the FBI proposes to resume routine destruction of in accordance with its established records retention plan include the following: files relating to criminal investigations, suitability or applicant-type investigations, correspondence files, and files of an administrative nature generally.

SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS
WITH RESPECT TO INTELLIGENCE ACTIVITIES,
Washington, D.C., February 20, 1976.

Hon. CLARENCE M. KELLEY,
Director, Federal Bureau of Investigation,
Washington, D.C.

DEAR DIRECTOR KELLEY: I have considered your letter of January 12, 1976, regarding the request of the Majority Leader and the Minority Leader on January 27, 1975, that the FBI not destroy any records which might have a bearing on matters specified in Senate Resolution 21.

The Select Committee deeply appreciates your instructions issued immediately after the request establishing a moratorium on destruction of all FBI files of whatever description. We understand that this moratorium has been costly and has produced substantial administrative burdens.

Therefore, the Select Committee would raise no objection to the resumption of destruction of certain records which would have no relationship whatsoever to the matters specified in S. Res. 21. We are concerned, however, that resumption of routine destruction in accordance with your established Records Retention Plan may result in destroying materials which might be of use in connection with the work of a future Senate committee engaged in oversight of the FBI.

Consequently, we suggest that you confer with the Attorney General so as to ensure that he is satisfied that reinstitution of destruction under the Records Retention Plan is consistent with his policies regarding the availability of ma-

terials for future Congressional oversight, as well as for effective supervision of the FBI by the Attorney General.

I will be happy to recommend to the Majority Leader and Minority Leader that they endorse resumption of records destruction, upon receipt of notification that the Attorney General has approved such destruction after considering the concerns stated above.

Thank you again for your continued cooperation with the Select Committee.

Sincerely,

FRANK CHURCH.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., March 1, 1976.

HON. BELLA S. ABZUG,
Chairwoman, Subcommittee on Government Information and Individual Rights, Committee on Government Operations, Rayburn House Office Building, Washington, D.C.

DEAR MADAM CHAIRWOMAN: I have your letter of February 24 which requests that the moratorium on destruction of files and records be extended "until such time as Congress has had an opportunity to act on legislation dealing with this matter."

I have referred your letter to various officials in the Department of Justice for a further analysis of the effects of such a general postponement. I realize that the postponement is related to investigations of the Pike and Senate Select Committees, but this constitutes a broad area. As soon as I have their analysis and recommendations, I will write to you again.

I do want to point out, however, that one matter of special interest to the Edwards Subcommittee of the House Judiciary Committee was the adoption of procedures for the destruction of some material, and I thought it was considerable progress when our guidelines committee adopted as a matter of principle that there should be some weeding out of files.

In addition, there are some instances where retention of material might be opposed by those who were the subject of the material.

As you know, the request that the Department refrain from destroying documents came from the Senate leadership, and no similar request was made by the House leadership.

Sincerely,

EDWARD H. LEVI,
Attorney General.

HOUSE OF REPRESENTATIVES,
GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., February 24, 1976.

MR. GEORGE BUSH,
Director, Central Intelligence Agency,
Washington, D.C.

DEAR MR. BUSH: This Subcommittee has jurisdiction of government information policy, including the Privacy Act of 1974 and the Freedom of Information Act.

As you know, during the inquiries conducted by the House and Senate Select Committees on Intelligence, your agency agreed to refrain from destroying files and records relating to their investigations. The Pike Committee's tenure has expired and the Church Committee will report shortly.

We write now to request that the moratorium on destruction of files and records be extended until such time as Congress has had an opportunity to act on legislation dealing with this matter.

Please affirm to this Subcommittee, within 10 days, that it is your intention to honor the ban on destruction of data in accordance with our request.

Sincerely,

BELLA S. ABZUG,
Chairwoman.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., March 4, 1976.

Hon. BELLA S. ABZUG,
Chairwoman, Government Information and Individual Rights Subcommittee, Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRWOMAN: This responds to your letter of February 24, to the Secretary requesting that the Treasury Department continue to refrain from destroying files and records of interest to the House and Senate Select Committees on Intelligence until such time as Congress has had an oportunity to act on legislation in this area.

In January, 1975, the leadership of the Senate requested that we not destroy records or documents which might have a bearing on the subjects under investigation. The Treasury Department complied with that request with certain necessary exceptions of which the Select Committee was made aware.

Those materials which have been excluded from operation of the destruction embargo include general tax related information of the Internal Revenue Service, investigative and protective intelligence files of the Secret Service, and criminal investigative files of other law enforcement units of the Treasury Department. The common bases for exempting these materials from the destruction embargo are that they are normally destroyed routinely in accordance with records disposal schedules and that continued maintenance of unnecessary files in these systems will interfere with the effective use of relevant law enforcement and tax information and will impose substantial records storage burdens.

In no case have we destroyed files or records which we believed might be of interest to the inquiries of the Select Committees. Thus, for example, the Internal Revenue Service has preserved the files and records relating to its Special Services Staff and the Secret Service has preserved its files and records relating to the investigation by the Warren Commission of the assassination of President John F. Kennedy.

The Treasury Department will continue to preserve this type of files and records for the duration of the Senate Select Committee's tenure. Arrangements for the proper disposition of Treasury Department files and records held by either of the Select Committees will be discussed with the Senate and House leadership as appropriate, and the destruction of any information will be made in accordance with Presidential directives and as otherwise provided by law.

Should the Subcommittee have any questions, they may be directed to Mr. J. Robert McBrien, Office of the Secretary, our liaison with the Select Committee.

Sincerely,

RICHARD R. ALBRECHT,
General Counsel.

DEPARTMENT OF STATE,
Washington, D.C., March 19, 1976.

Hon. BELLA S. ABZUG,
Chairwoman, Subcommittee on Government Information and Individual Rights, Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR MADAME CHAIRWOMAN: Secretary Kissinger has asked me to respond to your letter of February 24, 1976 in which you requested that Department of State files relating to the House and Senate Select Committee on Intelligence not be destroyed.

In a letter to the Secretary dated January 27, 1975 Senators Scott and Mansfield requested that the Department not destroy or otherwise dispose of records or documents which might have a bearing on the investigation conducted by the Senate Select Committee. We have complied with their request and, at the appropriate time, intend to discuss the matter further with them.

It is our position that the maintenance of files and records, and their destruction shall be governed by the appropriate laws and regulations.

Sincerely,

ROBERT J. MCCLOSKEY,
Assistant Secretary for Congressional Relations.

CENTRAL INTELLIGENCE AGENCY,
Washington, D.C., March 8, 1976.

Hon. BELLA S. ABZUG,
Chairwoman, Subcommittee on Government Information and Individual Rights, Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR MADAME CHAIRWOMAN: This is in response to your letter of 24 February 1976 regarding the disposition of CIA records which are the subject of inquiry by the Senate and House Select Committees on Intelligence.

The moratorium on the destruction of Agency documents as requested by Majority Leader, Mike Mansfield, and Minority Leader, Hugh Scott, by letter dated 27 January 1975 is still in effect and will be the subject of discussion by the Agency with them.

Destruction by the Agency material will be in accordance with Presidential directives and as permitted by law.

Sincerely,

GEORGE BUSH,
Director.

THE DEPUTY SECRETARY OF DEFENSE,
Washington, D.C., March 5, 1976.

Hon. BELLA S. ABZUG,
Chairwoman, Subcommittee on Government Information and Individual Rights, Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR MS. CHAIRWOMAN: Secretary Rumsfeld has asked me to reply to your letters to the Secretary and the Director, National Security Agency regarding the moratorium on destruction of files and records relating to the investigations of the Senate and House Select Committees on Intelligence.

The moratorium requested by Senators Mansfield and Scott remains in effect and the Department of Defense continues to accede to that request. Moreover, arrangements have been made with Representative Pike to ensure that the material that was made available to the House Select Committee on Intelligence will be preserved intact. We also anticipate arrangements to that effect will be worked out with the Senate Select Committee on Intelligence.

Sincerely,

ROBERT ELLSWORTH.

CIA DESTRUCTION OF DOCUMENTS

Mr. KENNEDY. Mr. President, on June 7, following reports that the Central Intelligence Agency planned to destroy certain records it had gathered during the course of the recent congressional investigations, I wrote Director Bush urging that the destruction not take place. While I had not had the opportunity to review the applicable Federal records-retention laws, it seemed to me that time was needed by a number of interested committees to determine whether there was any further need or use for those documents. I was also concerned that some of the records may be relevant to litigation or pending requests for information under the Freedom of Information Act.

It seems to me, Mr. President, that every time the document shredder has been activated in recent years, it has been the public interest that has wound up in the incinerator. ITT shredded documents concerning its antitrust settlement. The FPC shredded records regarding its natural gas survey. Then FBI Director L. Patrick Gray "deep sixed" files from the White House plumbers. President Nixon's Committee to Re-elect sent Watergate-related materials through the electric chopper, And the CIA itself mysteriously destroyed documents relating to its drug-testing program.

I was pleased to receive Director Bush's response before the recess, indicating that there would be a moratorium on any file destruction, that the Senate Select Committee on Intelligence would receive schedules of records to be destroyed in advance of destruction, and that no records subject to pending FOIA or Privacy Act requests would be destroyed. Furthermore, the National Archives will have to approve the legality of destruction under applicable Federal laws.

Director Bush's letter to me is most responsive to my concerns, and I believe that the interests of the public and the Congress will be well served by this new approach adopted by the CIA. I have over the past few years criticized the CIA's handling of disclosure and information related matters; I am pleased now to commend the sensitivity Mr. Bush is showing in dealing with the need in this instance to balance the interests of personal privacy and agency openness. This is a most welcome direction for both the Agency and its Director to be charting.

I ask unanimous consent that my original letter to the Director and his recent response to me be printed in the RECORD.

There being no objection, the correspondence was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., June 7, 1976.

HON. GEORGE BUSH,
Director, Central Intelligence Agency,
Washington, D.C.

DEAR DIRECTOR BUSH: I noted in the Washington Post of June 4, 1976, that the Central Intelligence Agency plans to destroy secret records compiled over the past year concerning illegal and improper agency activities. As chairman of the Senate Subcommittee on Administrative Practice and Procedure, which monitors federal information practices and has jurisdiction over agency administration of the Freedom of Information Act, I urge you to defer any such planned destruction for the foreseeable future.

First, the Senate has recently established a new Select Committee on Intelligence Oversight which is not yet fully organized. As a strong supporter of the Resolution establishing that Committee, I believe that its members should first have the chance to make an independent determination whether any of the documents in question might be necessary or useful to their activities.

Second, there are federal statutes relating to the maintenance of records which may be applicable to the records in question, even if they were illegally compiled or reflect improper agency activities. Although you may have determined that these laws are not here applicable, FBI Director Kelley, for example, has publicly stated that the Bureau could not destroy similar materials because of federal record-keeping laws. I would like for my subcommittee to have the opportunity to review those provisions in light of the proposed document destruction.

Third, proposals have been advanced that would require federal agencies engaged in illegal activities which may have violated the constitutional rights of American citizens to notify those persons of such activities. The Department of Justice is entertaining such a proposal, and legislation to that effect is presently pending in the House. Destruction of the records in question may make notice impossible, and thus should be deferred until Congress has determined whether or not to act in this area.

Fourth, there is pending in the House legislation (which I am considering introducing in the Senate) to allow certain classes of persons to sue the federal government for injury arising from the administering of dangerous drugs by federal agents or employees without the informed consent of those persons. (A private bill affording payment of a settlement in the case involving the Olsen family has already cleared the Senate.) Destruction of records might present an obstacle to the Congress' ability to make judgments in future cases like this.

Fifth, there may be outstanding requests under the Freedom of Information Act that encompass the material in question. In at least one reported cases, a federal court has strongly criticized an agency for proceeding, even under a routine records-destruction procedure, to dispose of documents falling within the plaintiff's request; it would be unconscionable for this to occur again.

In short, while it has been reported that you have concluded that records destruction will be consistent with applicable laws and requirements of pending litigations and Justice Department investigations, it is equally important that any such destruction be considered in light of pending or proposed legislation and congressional investigations, and further, that there be no ambiguity as to the application of such "applicable laws."

Obviously any after-the-fact assessment would be fruitless where the proposed action would obliterate the only material which would provide any basis for such assessment.

It is inconceivable to me that the Central Intelligence Agency would not have sufficient file storage capacity to maintain the integrity of the documents in issue for the foreseeable future. In light of the continuing interest of the Congress and the public in the intelligence activities of government—past as well as future—I therefore request that the proposed document destruction not be carried out until the many congressional committees with an interest in this area have been heard on the matter.

Sincerely,

EDWARD M. KENNEDY,

CENTRAL INTELLIGENCE AGENCY,
Washington, D.C., June 25, 1976.

HON. EDWARD M. KENNEDY,
Chairman, Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of 7 June 1976 expressing concern as to the Agency's plans to destroy Agency material which has been under a moratorium imposed by the Senate leadership pending completion of the investigation of the Agency by the Senate Select Committee.

By letter of 2 June, I informed Senators Hugh Scott and Mike Mansfield of our plans to destroy Agency documents and materials and requested their confirmation of our intended action in view of the moratorium. This was done only as a preliminary step to destruction to determine if there is further congressional interest. I wish to make clear that it was never my intention to destroy any documents still subject to Justice Department investigation or relevant to litigation.

We have extended the moratorium for six months, to expire on 10 December 1976, as requested by the Senate leadership. Prior to the destruction of any records, we shall transmit to the Senate Select Committee on Intelligence copies of the record schedules which are submitted to the National Archives and Record Service for their approval prior to the destruction of any records. The same will be done with respect to those routine administrative records which, although not involved under S. Res. 21 were withheld from routine destruction during the life of that Resolution.

You may also be assured that we will not destroy any Agency record holdings of interest to any pending Freedom of Information Act or Privacy Act requests. In regard to your support of pending legislation to require the Agency to notify individuals concerning whom we have information which is deemed to have been collected improperly, I must reaffirm my position as stated to the House Government Operations Subcommittee on Government Information and Individual Rights. Such notification would be unworkable as our information is incomplete and considerably outdated. Further, such an undertaking could be a further violation of the privacy of the individuals involved if mail is misdirected. The principal programs involved, mail intercept and Chaos, involved passive collection and did not involve any Agency actions directed against specific individuals.

I appreciate your personal interest in the matter and trust that this letter satisfies your concerns.

Sincerely,

GEORGE BUSH,
Director.

Office of the Attorney General
Washington, D. C. 20530

JUL 7 1976

Honorable Bella S. Abzug
Chairwoman, Government Information
and Individual Rights Subcommittee
Committee on Government Operations
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Chairwoman:

Your letter of June 4, 1976 requests a statement of the Department of Justice's interest in preserving CIA files and records relating to pending litigation and Department investigations as well as any opinion concerning an agency's responsibility to destroy files pursuant to the Privacy Act of 1974.

This Department has not issued any formal statements concerning the preservation of CIA or other files relating to matters in litigation or under investigation. As investigations were undertaken or suits filed relating to agency records, we informally advised the agency concerned that we expected all records relating to the program or matter involved to be preserved until such time as the litigation or investigation is completed. Thus, we have advised the CIA to retain records relating to the mail opening program while the Department's investigation of the matter continues.

Neither I nor any other official in the Department has issued an opinion concerning destruction of records pursuant to the Privacy Act of 1974. In connection with the destruction of the Joseph Kraft surveillance records,

however, I took the position that it was my responsibility, as head of the agency maintaining the records to make the legal determination as to whether their continued maintenance by this Department was permitted by the Privacy Act. Since I determined that continued maintenance was not permitted under subsection (e) of that Act, I requested the Archivist to determine whether he wished to maintain these records, as authorized by subsection (l) of the Act or whether he would authorize their destruction. The Archivist having determined that the documents were not of sufficient historic interest to warrant preservation, I authorized their destruction. The practices followed in the Kraft matter, in my opinion, followed the dictates of the Privacy Act of 1974.

Sincerely,

Edward H. Levi
Attorney General

United States Senate

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON
ADMINISTRATIVE PRACTICE AND PROCEDURE
(PURSUANT TO SEC. 3, S. RES. 72, 94TH CONGRESS)
WASHINGTON, D.C. 20510

June 7, 1976

Honorable George Bush
Director
Central Intelligence Agency
Washington, DC 20505

Dear Director Bush:

I noted in the Washington Post of June 4, 1976, that the Central Intelligence Agency plans to destroy secret records compiled over the past year concerning illegal and improper agency activities. As chairman of the Senate Subcommittee on Administrative Practice and Procedure, which monitors federal information practices and has jurisdiction over agency administration of the Freedom of Information Act, I urge you to defer any such planned destruction for the foreseeable future.

First, the Senate has recently established a new Select Committee on Intelligence Oversight which is not yet fully organized. As a strong supporter of the Resolution establishing that Committee, I believe that its members should first have the chance to make an independent determination whether any of the documents in question might be necessary or useful to their activities.

Second, there are federal statutes relating to the maintenance of records which may be applicable to the records in question, even if they were illegally compiled or reflect improper agency activities. Although you may have determined that those laws are not here applicable, FBI Director Kelley, for example, has publicly stated that the Bureau could not destroy similar materials because of

federal record-keeping laws. I would like for my subcommittee to have the opportunity to review those provisions in light of the proposed document destruction.

Third, proposals have been advanced that would require federal agencies engaged in illegal activities which may have violated the constitutional rights of American citizens to notify those persons of such activities. The Department of Justice is entertaining such a proposal, and legislation to that effect is presently pending in the House. Destruction of the records in question may make notice impossible, and thus should be deferred until Congress has determined whether or not to act in this area.

Fourth, there is pending in the House legislation (which I am considering introducing in the Senate) to allow certain classes of persons to sue the federal government for injury arising from the administering of dangerous drugs by federal agents or employees without the informed consent of those persons. (A private bill affording payment of a settlement in the case involving the Olsen family has already cleared the Senate.) Destruction of records might present an obstacle to the Congress's ability to make judgments in future cases like this.

Fifth, there may be outstanding requests under the Freedom of Information Act that encompass the material in question. In at least one reported case, a federal court has strongly criticized an agency for proceeding, even under a routine records-destruction procedure, to dispose of documents falling within the plaintiff's request; it would be unconscionable for this to occur again.

In short, while it has been reported that you have concluded that records destruction will be consistent with applicable laws and requirements of pending litigation and Justice Department investigations, it is equally important that any such destruction be considered in light of pending or proposed legislation and congressional investigations, and further, that there be no ambiguity as to the application of such "applicable laws."

Obviously any after-the-fact assessment would be fruitless where the proposed action would obliterate the only material which would provide any basis for such assessment.

It is inconceivable to me that the Central Intelligence Agency would not have sufficient file storage capacity to maintain the integrity of the documents in issue for the foreseeable future. In light of the continuing interest of the Congress and the public in the intelligence activities of government--past as well as future--I therefore request that the proposed document destruction not be carried out until the many congressional committees with an interest in this area have been heard on the matter.

Sincerely,

Edward M. Kennedy
Chairman

cc: Honorable Mike Mansfield, Majority Leader
Honorable Hugh Scott, Minority Leader
Honorable James O. Eastland, Chairman, Committee on Judiciary
Honorable Daniel K. Inouye, Chairman, Senate Intelligence Oversight Committee
Honorable John V. Tunney, Chairman, Senate Subcommittee on Constitutional Rights
Honorable Peter W. Rodino, Jr., Chairman, House Committee on the Judiciary
Honorable Donald Edwards, Chairman, House Subcommittee on Civil and Constitutional Rights
Honorable Jack Brooks, Chairman, House Committee on Government Operations
Honorable Bella Abzug, Chairman, House Subcommittee on Individual Rights and Government Information

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
National Archives and Records Service
Washington, DC 20408

JUN 7 1976

Honorable George Bush
Director, Central Intelligence Agency
Washington, D. C. 20505

Dear Mr. Bush:

Through the courtesy of your General Counsel's office we have received a copy of your letter of June 2 to Senator Hugh Scott indicating the intent to resume the disposal of Central Intelligence Agency records.

The disposal of Federal records is governed by the Federal Records Act which requires the approval of the Administrator of General Services (44 U.S.C. 3303a) before such disposal can take place. This authority has been delegated by the Administrator to the Archivist of the United States.

In view of our responsibility in this area we believe that some clarification of your June 2 letter is desirable. I refer particularly to the references to "records which were collected and maintained by the Agency and which were subject to investigation by the Rockefeller Commission and the Select Committee" and to the Privacy Act and Executive Order 11905 requiring the destruction of records. I would appreciate knowing whether the requirements of the Federal Records Act are being observed and, in particular, whether the records proposed for destruction have been described on records disposition schedules approved by us.

I share with you the desire to dispose of records which have no permanent value at an early moment. However, pending clarification of the above points I would appreciate it if you would continue in effect the moratorium on the destruction of Central Intelligence Agency records.

Sincerely,

James B Rhoads

JAMES B. RHOADS
Archivist of the United States

cc: Timothy H. Ingram, Subcomm. on Gov't. Infor. & Individual Rights

June 4, 1976

Honorable Elmer B. Staats
Comptroller General of the United States
General Accounting Office
441 G Street, Northwest
Washington, D.C. 20548

Dear Mr. Comptroller General:

Enclosed is a copy of my statement of June 3, 1976 to the House of Representatives concerning the impending destruction by the Central Intelligence Agency of certain files and records. You will note that Director of Central Intelligence George Bush states in his letter of June 2, 1976 to Senator Hugh Scott, that "the Agency will destroy records which were collected and maintained by the Agency and which were subject to investigation by the Rockefeller Commission and the Select Committee." In addition, Mr. Bush says "all records destruction will be fully consistent with other applicable laws, Presidential directives, and the requirements of pending litigation and Justice Department investigations."

This Subcommittee requests that GAO ascertain and supply to this Subcommittee a detailed description of the nature and exact quantity (by volume or weight) of the files and records intended to be destroyed by CIA. Please supply separate schedules for those files designated by CIA as "the backlog of routine administrative records" and those which were "subject to investigation" by the Rockefeller Commission and the Select Committee.

Also, please ascertain and report to this Subcommittee on the methods and procedures utilized by CIA to exclude files and records subject to pending litigation and Justice Department investigations. Please inform the Subcommittee of the nature and exact quantity of the files and records falling under these latter designations.

For further information concerning this request please have your staff contact Timothy Ingram of the Subcommittee staff.

Sincerely,

BELLA S. ABZUG
Chairwoman

Enclosure

June 4, 1976

Honorable Edward H. Levi
Attorney General of the United States
U.S. Department of Justice
Constitution Avenue bet 8th & 10th Streets
Washington, D.C. 20530

Dear Mr. Attorney General:

Enclosed is a copy of my letter of today to the Comptroller General. You will note that I request that he ascertain, among other things, the nature and quantity of the files and records "subject to pending litigation and Justice Department investigations." I would appreciate it if you would supply this Subcommittee with a statement of the Justice Department's interest in preserving CIA files and records falling under these designations.

You will also note that Director Bush states, inhhis letter to Senator Scott, that the Agency is required by the Privacy Act of 1974 to destroy certain files and records maintained by it. Please supply the Subcommittee with any opinion of the Attorney General or the Department of Justice concerning the requirements of the Privacy Act in this matter. If no opinion has been rendered, please inform the Subcommittee of what practice CIA and other agencies should adopt to conform to the expungement provisions of the Privacy Act.

Sincerely,

BELLA S. ABZUG
Chairwoman

Enclosure

NINETY-FOURTH CONGRESS

Congress of the United States

House of Representatives

GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C
WASHINGTON, D.C. 20515

June 4, 1976

Honorable Daniel Inouye
Chairman
Senate Select Committee on Intelligence
442 Russell Senate Office Building
Washington, D.C.

Dear Senator Inouye:

I am deeply concerned that valuable documents relating to this nation's intelligence activities will be lost forever to investigators and historians, should abrupt approval be given to agency requests to lift the present moratorium on files destruction.

The letter to the Senate Majority and Minority Leaders of June 2, 1976 from Central Intelligence Agency Director George Bush (attached) both illustrates the problem, and its immediacy. Mr. Bush bluntly states that, "Along with the backlog of routine administrative records, the Agency will destroy records which were collected and maintained by the Agency and which were subject to investigation by the Rockefeller Commission and the Select Committee." The proposed destruction plan of CIA is so broad that it could include the destruction not only of documents inspected by Church Committee investigators and returned to the CIA, but documents "subject to investigation" which in fact were never examined by the Committee or its members.

In his letter, Mr. Bush does not provide any itemization of the materials he intends to dispose of. He keys the destruction plans to records falling within the scope of the Rockefeller Commission (directed by the President "to determine whether any domestic CIA activities exceeded the Agency's statutory authority") and section 2 of S. Res. 21, establishing the Church Committee.

As you are aware, the Senate directed the original Select Committee on Intelligence Activities under S. Res. 21, subsection 14 of section 2, for example, to determine "The extent...of overt and covert intelligence activities in the United States and abroad." If Mr. Bush is now given free license to destroy all files falling within the ambit of section 2 of the Resolution, the new Standing Select Committee on Intelligence will be greatly hampered in its oversight efforts. Subsection 13 of section 2 also directed the Church Committee to determine "Whether there is unnecessary duplication of expenditure and effort in the collection and processing of intelligence information..." Surely the Director of Central Intelligence should not be permitted to destroy these related papers without further elaboration.

A spokesman for the Senate Intelligence Committee is quoted in this morning's Washington Post (Friday, June 4) as saying: "There's no objection from this source because this committee has gone out of business...We assume there'll be a record copy kept (of non-routine files)." There is nothing in the Bush letter to suggest that copies of documents slated for destruction will be saved. Conversations my staff had with CIA legislative counsel last night indicated that records would be destroyed, with no provision for the keeping of duplicates or historical tapes.

Mr. Bush appeared before this Subcommittee on April 28 of this year to testify on my bill, H.R. 12039, which would require agencies to notify the subjects of CIA's CHAOS program, FBI's COINTEL operations, and certain other improper federal surveillance activities. The following exchange took place at the hearing between Representative Michael Harrington of the Subcommittee and CIA legislative counsel George Cary (transcript, pages 47-8):

> Mr. Harrington. Will (the CHAOS records) exist if the Director is taken at his word and there is a destruction after the moritorium ends?/ Will it exist in any fashion on computer lists, separate or not, so that it could be reconstituted?
>
> Mr. Cary. It will not exist.
>
> Mr. Harrington. There will be no record at all in any fashion, in any form that will allow your Agency in any one of the programs -- not limiting it to CHAOS -- to allow there to be a retrieval or reconstruction of the information gathered on these people?

> Mr. Cary. I am here under oath and I want to be sure we have no misunderstanding. There is some information which we keep on American citizens which is entirely proper information, and which starts from employment investigations, as information with respect to contractors with the Agency, and things of that sort. Aside from those areas which have been described in law and regulation as proper for the Agency, we fully intend to expunge these records completely.

The assumption implicit in Mr. Bush's letter is that since many of these documents have been reviewed by one or two investigators, they can be of no further use or interest to others. This is simply not the way investigators -- or historians, for that matter -- go about their task. A bit of information overlooked by one researcher may have tremendous importance for another who is approaching the subject with different questions or knowledge. Facts build on themselves. A review of documents skimmed by Church Committee staffers months ago may, in light of the Committee's recently published final reports, assume a new significance in an on-going look at agency operations. Furthermore, the examination by a scholar fifty years from now of an agency's raw files may spark an entirely different emotional and intellectual impact than a reading of a dry congressional report summarizing those files.

Director Bush assures us that "all records destruction will be fully consistent with other applicable laws, presidential directives, and the requirements of pending litigation and Justice Department investigations." The only major pending litigation involves the CIA CHAOS and mail interception programs. Presumably, all other CIA documents which were "subject to investigation" could be disposed of -- including data on covert actions, foreign assassination attempts, the Huston Plan, relationships with U.S. reporters, and the use of religious groups, and academic and voluntary organizations.

The "applicable laws" referred to by Mr. Bush would include the records disposal provisions of Title 44, Chapter 33 of the U.S. Code. No government document may be destroyed by a federal agency unless its destruction is included in a records disposal schedule approved by the Archivist of the United States. Deputy Assistant Attorney General Mary Lawton of the Office of Legal Counsel told this Subcommittee on April 28 that the resumption of the FBI's records disposal program, which was approved by the Senate leadership and the Senate Select Committee within the last two months,

"involves only those records approved for destruction by the National Archives and Records Service under the established Records Control Schedule."

This Subcommittee has oversight jurisdiction over the National Archives and Records Service. From our experience, NARS is simply not equipped to oversee or to make detailed judgments regarding which intelligence files should be preserved because of possible future interest to researchers or congressional investigators. Officials of the Archives acknowledge this.

The Records Disposition Division of the Archives' Office of Federal Records Centers has a staff of about ten people. The appraiser with responsibility for the FBI, for example, also is responsible for the disposition of all federal judicial records, and the files of HUD, Justice, the D.C. Government, SEC, Civil Service, the Army, the Environmental Protection Agency, and the Federal Home Loan Bank Board -- with back-up responsibility for four other agencies. On March 26, 1976, he approved, and the Archivist subsequently signed, authorization for the destruction of "Closed files of the Federal Bureau of Investigation Field Division containing investigative reports, inter- and intra-office communications, related evidence...collected or received during the course of public business in accordance with the FBI investigative mandate."

The appraiser's approval was based upon a review of a 12-page 1969 records retention plan for the FBI, which states that "field records generally are not complete and need not be retained any longer than administrative needs require access to backup material."

The Government Accounting Office Report on FBI "Domestic Intelligence Operations" has commented on the failure of the FBI in adequately controlling Field Office practices on the distinction between preliminary inquiries and full-scale investigations, with the resulting failure to control proper reporting to Headquarters. Recent press reports have also noted the lack of availability of files and records presumably found in the New York City Field Office to the Justice Department lawyers defending the Socialist Workers Party case in New York. The New York Times reported on April 30 that Mr. J. Stanley Pottinger is said to believe that it was "possible" that evidence to contradict certain findings contained

in his report to the Attorney General on the FBI's investigation into the King assassination "might turn up in the 2,500 files, believed to contain more than 200,000 documents, in FBI field offices around the country."

The Archives appraiser told the Subcommittee staff he was unaware of these reports, and acknowledged it was quite possible that FBI records, as those involving the King assassination, might be destroyed under the disposal schedule. But he contended that with the large volumes of paper he was dealing with, across-the-board approvals were the only kind feasible.

As you know, the moratorium on intelligence-related files destruction is not legally binding. It resulted from a request by the Senate leadership in late January, 1975, which the agencies were asked to observe. (A copy of the moratorium letter to GSA Administrator Arthur Sampson is enclosed.) It was tied to the investigation of the Church Committee and S. Res. 21. Now that that Committee has expired, it is to be expected that all the affected agencies will ask to be removed from its provisions. Typical is the April 23, 1976 letter from Deputy Defense Secretary Robert Ellsworth (attached) requesting that the moratorium be lifted for all DoD materials.

S. Res. 400, in establishing the Senate Committee on Intelligence, does provide in section 10 that the records in the possession of the Church Committee shall be turned over to the new standing Committee. But many documents which were accepted by the Church Committee on a "loan" basis have been returned to the agencies. The Resolution does not address itself to the question of the disposition of these materials, nor of those records viewed by Committee investigators which were never removed from agency files or transferred to the Senate.

Mr. Bush in his letter says that the CIA "is required" to destroy much of this material under the provisions of the Privacy Act of 1974 (5 USC 552a) and Executive Order 11905.

The Privacy Act does prohibit an agency from maintaining systems of records on individuals which are inaccurate, irrelevant to the statutory purpose of the agency, or outdated. An agency is also prohibited from keeping a record "describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within

the scope of an authorized law enforcement activity." (Section (e) (1), (5), and (7) of the Act.) Mr. Bush glosses over the distinction which the Act allows, between the screening of impermissible personal data, and the agency policy documents which approved the gathering of such information. The Privacy Act clearly states that access to records otherwise available under the Freedom of Information Act shall not be restricted. The Privacy Act's coverage is limited to personal data, the release of which would constitute a clearly unwarranted invasion of personal privacy. In addition, Deputy Assistant Attorney General Lawton has noted: "As we read the Privacy Act, it prohibits agency maintenance of certain records but permits the Archives to maintain those portions of the records it finds to be of historic significance."

Mr. Bush's tortured reading of Executive Order 11905 appears to be that the prohibitions listed in the order against future agency actions require that documents relating to past activities, now restricted, be destroyed. The order simply does not raise the issue of records, nor does this interpretation appear consistent with its reform intent.

I would urge that no approval be given the CIA's request -- nor the request of any other agency -- to destroy materials covered by the Senate leadership moratorium, until fuller consideration can be given the matter. At the very least, a full and detailed itemization of the records proposed for destruction should be provided by each agency. The impact on the new Intelligence Committee could be enormous, and I would urge that the Committee in its organizational meetings formally consider the issue. I would also respectfully suggest that the leadership or the Committee invite the Archivist of the United States to outline his responsibility for records preservation and the steps he will take to insure the retention of papers of historical interest.

It would be a tragic mistake to approve sweeping requests for records destruction at this time. The new Select Intelligence Committee should be given an opportunity first to choose its staff, and to thoroughly appraise its objectives and the investigative areas it may wish to pursue. An effort should be made then to reduce the legitimate storage burdens of a large volume of agency administrative records, travel vouchers, applicant files, and the like. The point is that the intelligence agencies have a decided

self interest in disposing of embarrassing and damning evidence about themselves. Some arrangements must be made to allow outside oversight of any planned records disposal by those familiar with the contents of the documents and the nature of agency filing systems. Some of the alternatives might include a special panel of historians to advise the Archivist; a task force of Senate Intelligence staff members assigned to report back to the Select Committee; or consultation with the Justice Department prosecution force, with an evaluation by the intelligence oversight advisory committees and/or the Government Accounting Office.

If you or your staff have further questions please contact Subcommittee Staff Director Timothy Ingram at 225-3741.

Sincerely,

BELLA S. ABZUG
Chairwoman

78-638 O - 77 - 20

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

2 June 1976

Honorable Hugh Scott
United States Senate
Office of the Minority Leader
Washington, D.C. 20510

Dear Senator Scott:

On 27 January 1975, following adoption of S. Res. 21 creating the Select Committee on Intelligence, you and Senator Mike Mansfield requested that the Central Intelligence Agency "not destroy, remove from [its] possession or control, or otherwise dispose or permit the disposal of any records or documents which might have a bearing on the subjects under investigation, including but not limited to all records or documents pertaining in any way to the matters set out in section 2 of S. Res. 21."

In response to this request, the Agency placed in effect a complete moratorium on the destruction of records, including normal administrative records scheduled for routine destruction.

The purpose of this letter is to advise you that it is our intention to proceed with destruction of records, now that the Select Committee has completed its investigation and issued its final report. We have so advised Senator Church.

Along with the backlog of routine administrative records, the Agency will destroy records which were collected and maintained by the Agency and which were subject to investigation by the Rockefeller Commission and the Select Committee. The Agency is required to destroy much of this latter material by the Privacy Act of 1974 (P. L. 93-579) and by Executive Order 11905. Of course, all records destruction will be fully consistent with other applicable laws, Presidential directives, and the requirements of pending litigation and Justice Department investigations.

I trust you agree that this action is now necessary and appropriate, and I would appreciate your confirmation of this understanding.

I am sending a duplicate of this letter to Senator Mike Mansfield.

Sincerely,

George Bush
Director

NINETY-FOURTH CONGRESS

Congress of the United States

House of Representatives

GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C
WASHINGTON, D.C. 20515

March 30, 1976

Honorable Edward H. Levi
Attorney General of the United States
U.S. Department of Justice
Constitution Avenue bet 9th & 10th Streets
Washington, D.C. 20530

Dear Mr. Attorney General:

Thank you for your letter of March 29, 1976 in which you inform me of your request that the Archivist dispose of the content of the electronic surveillance conducted in 1969 on the columnist, Joseph Kraft.

I am gratified that you have taken this landmark action, and want you to know that I agree with your interpretation of Sections (e) (1), (5) and (7) of the Privacy Act. This decision, as far as I know, is the first interpreting these vital provisions of the Act.

On February 24, 1976, I introduced a bill, H.R. 12039, to provide that the subjects of several programs, including COINTELPRO, be informed of the fact that they were subjected to surveillance and giving them the opportunity of having the file on them destroyed. The programs or operations covered by my bill include mail openings, illegal entries, warrantless wiretaps, monitoring of international communications, and the programs known as CHAOS and the Special Service Staff of Internal Revenue, as well as COINTELPRO. I had previously, on January 14, 1975, introduced H.R. 169 to amend the Privacy Act to provide for expunging of certain files.

I intend to hold hearings on H.R. 169 and on H.R. 12039 on April 13, 1976. I would appreciate having your testimony at that time. I would, of course, also appreciate having your support for the bills.

Sincerely,

Bella S. Abzug

BELLA S. ABZUG
Chairwoman

Office of the Attorney General
Washington, D. C. 20530

March 29, 1976

Honorable Bella S. Abzug
Chairwoman
Subcommittee on Government Information
and Individual Rights
Committee on Government Operations
U. S. House of Representatives
Washington, D.C. 20515

Dear Chairwoman Abzug:

In light of your interest in the preservation of certain records of this Department, I thought it advisable to notify you of my request to the Archivist to dispose of certain materials relating to an electronic surveillance of Joseph Kraft in 1969.

Mr. Kraft has requested destruction of these records pursuant to subsection (d) of the Privacy Act of 1974, 5 U.S.C. 552a(d). I have determined that the records in question may not properly be maintained by this Department pursuant to that Act and must therefore be destroyed or, if of historical interest, transferred to the Archivist. As the attached form 115, submitted to the Archives, notes, I am proposing that we destroy only the documents containing or summarizing the actual content of the surveillance, not the documents which relate to the initiation or termination of it. Much of the material has already been furnished to the Senate Select Committee and information concerning the incident is contained in the files. Thus, the historic fact of the occurrence of the surveillance will be preserved, not only in the files of this Department but also in the files of the Senate Select Committee.

In my view destruction of the files at this time fulfills my obligations under the Privacy Act and yet remains consistent with your earlier request.

Sincerely,

Edward H. Levi
Attorney General

REQUEST FOR RECORDS DISPOSITION AUTHORITY
(See Instructions on reverse)

LEAVE BLANK
JOB NO. NC1 – 65-76-2
DATE RECEIVED MAR 18 1976
NOTIFICATION TO AGENCY
In accordance with the provisions of 44 U.S.C. 3303a the disposal request, including amendments, is approved except for items that may be stamped "disposal not approved" or "withdrawn" in column 10
Date — Archivist of the United States

TO: GENERAL SERVICES ADMINISTRATION,
NATIONAL ARCHIVES AND RECORDS SERVICE, WASHINGTON, DC 20408

1. FROM (AGENCY OR ESTABLISHMENT)
Department of Justice

2. MAJOR SUBDIVISION
Federal Bureau of Investigation

3. MINOR SUBDIVISION
Files and Communications Division

4. NAME OF PERSON WITH WHOM TO CONFER — 5. TEL. EXT.
Mary C. Lawton — 2059

6. CERTIFICATE OF AGENCY REPRESENTATIVE:

I hereby certify that I am authorized to act for this agency in matters pertaining to the disposal of the agency's records; that the records proposed for disposal in this Request of _____ page(s) are not now needed for the business of this agency or will not be needed after the retention periods specified.

[X] A Request for immediate disposal.

[ ] B Request for disposal after a specified period of time or request for permanent retention.

C. DATE	D. SIGNATURE OF AGENCY REPRESENTATIVE	E. TITLE
3/8/76	[signature]	Attorney General

7. ITEM NO.	8. DESCRIPTION OF ITEM (With Inclusive Dates or Retention Periods)	9. SAMPLE OR JOB NO.	10. ACTION TAKEN
1.	Contents of sealed file which include 115 documents, 48 of which are original (some are classified Top Secret) and 67 duplicates. The contents were ordered removed from the general files of the Federal Bureau of Investigation by the Attorney General and sealed. The material relates to conversations overheard during a 1969 electronic surveillance. The sealed file consists of transcripts of conversations and memoranda describing, summarizing and transmitting product of electronic surveillance. Documentation of the initiation, implementation and termination of electronic surveillance project is included in files that will be retained in the FBI in its approved Records Control Schedule. Continued maintenance of the records covered by this disposal request conflicts with the provisions of the Privacy Act of 1974, 5 U.S.C. 552a(e)(1), (5) and (7).		

115-107

STANDARD FORM 115
Revised April, 1975
Prescribed by General Services Administration

NOTIFY THE VICTIMS

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from New York (Ms. ABZUG) is recognized for 10 minutes.

Ms. ABZUG. Mr. Speaker, the Government Information and Individual Rights Subcommittee, which I chair, has begun hearings on H.R. 12039, 13192, and 169. These bills would require that the victims of such illegal and improper programs as COINTELPRO—an FBI program, CHAOS—CIA, burglaries—FBI and CIA, mail openings—FBI and CIA, cable interceptions—National Security Agency, and the special service staff of the IRS be notified that they were targets or victims of these activities, told of their rights under the Privacy Act and the Freedom of Information Act, and afforded the option of having the unlawfully gathered files destroyed.

Book II of the report of the Senate Select Committee on Intelligence, which was released last Wednesday, includes a recommendation that is almost identical to what my bills, H.R. 12039, H.R. 13192, and H.R. 169, would require. The text of that recommendation follows:

Recommendation 90.—The Freedom of Information Act (5 U.S.C. 552(b)) and the Federal Privacy Act (5 U.S.C. 552(a)) provide important mechanisms by which individuals can gain access to information on intelligence activity directed against them. The Domestic Intelligence Recommendations assume that these statutes will continue to be vigorously enforced. In addition, the Department of Justice should notify all readily identifiable targets of past illegal surveillance techniques, and all COINTELPRO victims, and third parties who had received anonymous COINTELPRO communications, of the nature of the activities directed against them, or the source of the anonymous communication to them.

MIKE MANSFIELD
MONTANA

United States Senate
Office of the Majority Leader
Washington, D.C. 20510

March 24, 1976

Honorable Clarence M. Kelley
Director
Federal Bureau of Investigation
Washington, D. C. 20535

Dear Mr. Director:

You will recall that we wrote to you on January 27, 1975, requesting "that you not destroy, remove from your possession or control or otherwise dispose of documents. . ." which might be pertinent to the investigation which was provided for by S. Res. 21. We are now advised by Senator Church, as Chairman, that this moratorium is broader than necessary at this time.

Accordingly, we rescind our request of January 27, 1975, to the end that you may resume the Bureau's routine records disposal program. Our understanding is that the files involved in that program do not relate to security and intelligence matters.

With appreciation for your cooperation, we are

Sincerely yours,

Hugh Scott
HUGH SCOTT, REPUBLICAN LEADER

Mike Mansfield
MIKE MANSFIELD, MAJORITY LEADER

MAR 30 1976

Office of the Attorney General
Washington, D. C. 20530

March 29, 1976

Honorable Bella S. Abzug
Chairwoman
Subcommittee on Government Information
and Individual Rights
Committee on Government Operations
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairwoman Abzug:

You have asked me to have the Federal Bureau of Investigation refrain from destroying any material that might be useful to a future Congressional oversight committee. As you know, the Bureau has, since the Senate leadership requested a moratorium on destruction of files January 27, 1975, refrained from destroying any materials. It has done so in abundance of good faith, but the logistical burden of this policy has been very great. The Bureau, with the concurrence (enclosed) of Senators Hugh Scott and Mike Mansfield who made the 1975 request, intends to renew its routine destruction programs described in the attached memorandum.

You will notice that no intelligence files are sought to be destroyed. I believe the resumption of the routine destruction program--which is also consistent with Archival requirements--will in no way impede the responsibilities of Congressional oversight committees and will result in a considerable savings of money. I intend shortly to authorize the resumption of the destruction program.

Sincerely,

Edward H. Levi
Attorney General

DEPARTMENT OF STATE
Washington, D.C. 20520

MAR 25 1976

March 19, 1976

Honorable Bella S. Abzug, Chairwoman
Subcommittee on Government Information
and Individual Rights
Committee on Government Operations
House of Representatives
Washington, D. C. 20515

Dear Madame Chairwoman:

Secretary Kissinger has asked me to respond to your letter of February 24, 1976 in which you requested that Department of State files relating to the House and Senate Select Committee on Intelligence not be destroyed.

In a letter to the Secretary dated January 27, 1975 Senators Scott and Mansfield requested that the Department not destroy or otherwise dispose of records or documents which might have a bearing on the investigation conducted by the Senate Select Committee. We have complied with their request and, at the appropriate time, intend to discuss the matter further with them.

It is our position that the maintenance of files and records, and their destruction shall be governed by the appropriate laws and regulations.

Sincerely,

Robert J. McCloskey
Assistant Secretary for
Congressional Relations

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

8 March 1976

Honorable Bella S. Abzug, Chairwoman
Subcommittee on Government Information
and Individual Rights
Committee on Government Operations
House of Representatives
Washington, D. C. 20515

Dear Madame Chairwoman:

This is in response to your letter of 24 February 1976 regarding the disposition of CIA records which are the subject of inquiry by the Senate and House Select Committees on Intelligence.

The moratorium on the destruction of Agency documents as requested by Majority Leader, Mike Mansfield, and Minority Leader, Hugh Scott, by letter dated 27 January 1975 is still in effect and will be the subject of discussion by the Agency with them.

Destruction of Agency material will be in accordance with Presidential directives and as permitted by law.

Sincerely,

George Bush
Director

THE DEPUTY SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

5 MAR 1976

Honorable Bella S. Abzug
Chairwoman, Government Information
and Individual Rights Subcommittee
U. S. House of Representatives
Washington, D. C. 20515

Dear Ms. Chairwoman:

Secretary Rumsfeld has asked me to reply to your letters to the Secretary and the Director, National Security Agency regarding the moratorium on destruction of files and records relating to the investigations of the Senate and House Select Committees on Intelligence.

The moratorium requested by Senators Mansfield and Scott remains in effect and the Department of Defense continues to accede to that request. Moreover, arrangements have been made with Representative Pike to ensure that the material that was made available to the House Select Committee on Intelligence will be preserved intact. We also anticipate arrangements to that effect will be worked out with the Senate Select Committee on Intelligence.

Sincerely,

Robert Ellsworth

THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

MAR 4 1976

Dear Madame Chairwoman:

This responds to your letter of February 24, to the Secretary requesting that the Treasury Department continue to refrain from destroying files and records of interest to the House and Senate Select Committees on Intelligence until such time as Congress has had an opportunity to act on legislation in this area.

In January, 1975, the leadership of the Senate requested that we not destroy records or documents which might have a bearing on the subjects under investigation. The Treasury Department complied with that request with certain necessary exceptions of which the Select Committee was made aware.

Those materials which have been excluded from operation of the destruction embargo include general tax related information of the Internal Revenue Service, investigative and protective intelligence files of the Secret Service, and criminal investigative files of other law enforcement units of the Treasury Department. The common bases for exempting these materials from the destruction embargo are that they are normally destroyed routinely in accordance with records disposal schedules and that continued maintenance of unnecessary files in these systems will interfere with the effective use of relevant law enforcement and tax information and will impose substantial records storage burdens.

In no case have we destroyed files or records which we believed might be of interest to the inquiries of the Select Committees. Thus, for example, the Internal Revenue Service has preserved the files and records relating to its Special Services Staff and the Secret Service has preserved its files and records relating to the investigation by the Warren Commission of the assassination of President John F. Kennedy.

The Treasury Department will continue to preserve this type of files and records for the duration of the Senate Select Committee's tenure. Arrangements for the proper disposition of Treasury Department files and records held by either of the Select Committees will be discussed with the Senate and House leadership as appropriate, and the destruction of any information will be made in accordance with Presidential directives and as otherwise provided by law.

Should the Subcommittee have any questions, they may be directed to Mr. J. Robert McBrien, Office of the Secretary, our liaison with the Select Committees.

Sincerely,

Richard R. Albrecht
General Counsel

Honorable
Bella S. Abzug
Chairwoman
Government Information and
Individual Rights Subcommittee
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

MAR 4 1976

Dear Madame Chairwoman:

This responds to your letter of February 24, to the Secretary requesting that the Treasury Department continue to refrain from destroying files and records of interest to the House and Senate Select Committees on Intelligence until such time as Congress has had an opportunity to act on legislation in this area.

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In no case have we destroyed files or records which we believed might be of interest to the inquiries of the Select Committees. Thus, for example, the Internal Revenue Service has preserved the files and records relating to its Special Services Staff and the Secret Service has preserved its files and records relating to the investigation by the Warren Commission of the assassination of President John F. Kennedy.

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Should the Subcommittee have any questions, they may be directed to Mr. J. Robert McBrien, Office of the Secretary, our liaison with the Select Committees.

Sincerely,

Richard R. Albrecht
General Counsel

Honorable
Bella S. Abzug
Chairwoman
Government Information and
Individual Rights Subcommittee
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Office of the Attorney General
Washington, D. C. 20530

March 1, 1976

Honorable Bella S. Abzug
Chairwoman
Subcommittee on Government Information
and Individual Rights
Committee on Government Operations
Rayburn House Office Building
Washington, D. C.

Dear Madam Chairwoman:

I have your letter of February 24 which requests that the moratorium on destruction of files and records be extended "until such time as Congress has had an opportunity to act on legislation dealing with this matter."

I have referred your letter to various officials in the Department of Justice for a further analysis of the effects of such a general postponement. I realize that the postponement is related to investigations of the Pike and Senate Select Committees, but this constitutes a broad area. As soon as I have their analysis and recommendations, I will write to you again.

I do want to point out, however, that one matter of special interest to the Edwards Subcommittee of the House Judiciary Committee was the adoption of procedures for the destruction of some material, and I thought it was considerable progress when our guidelines committee adopted as a matter of principle that there should be some weeding out of files.

In addition, there are some instances where retention of material might be opposed by those who were the subject of the material.

78-638 O - 77 - 21

As you know, the request that the Department refrain from destroying documents came from the Senate leadership, and no similar request was made by the House leadership.

Sincerely,

Edward H. Levi
Attorney General

NINETY-FOURTH CONGRESS

Congress of the United States

House of Representatives

GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C
WASHINGTON, D.C. 20515

February 24, 1976

Mr. George Bush
Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Bush:

This Subcommittee has jurisdiction of government information policy, including the Privacy Act of 1974 and the Freedom of Information Act.

As you know, during the inquiries conducted by the House and Senate Select Committees on Intelligence, your agency agreed to refrain from destroying files and records relating to their investigations. The Pike Committee's tenure has expired and the Church Committee will report shortly.

We write now to request that the moratorium on destruction of files and records be extended until such time as Congress has had an opportunity to act on legislation dealing with this matter.

Please affirm to this Subcommittee, within 10 days, that it is your intention to honor the ban on destruction of data in accordance with our request.

Sincerely,

Bella S. Abzug

BELLA S. ABZUG
Chairwoman

Green, J

FILED

JUN 14 1976

JAMES F. DAVEY, Clerk

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

ADELE HALKIN, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 75-1773
RICHARD HELMS, et al.,	)	
Defendants.	)	

STIPULATED PROTECTIVE ORDER

It is hereby stipulated by and between the undersigned counsel that defendant George Bush in his capacity as Director of Central Intelligence shall take such steps as are appropriate, including express notice to CIA personnel responsible for the maintenance and management of official CIA records, to prevent the destruction of all those documents, indices, and computer records known as the "Operation CHAOS Files" and in part referred to in Recommendation (5) d. at page 150 of the Report to the President by the [Rockefeller] Commission on CIA Activities within the United States (which files are understood to include personality files, subject or organization files, chronological files of incoming and outgoing communications, and related administrative files) during the pendency of this civil action in District Court and subsequent appellate proceedings.

This Stipulation shall not preclude the parties from petitioning the Court for such relief from its provisions as may be appropriate prior to completion of the aforementioned District Court and appellate proceedings.

Respectfully submitted,

John H.F. Shattuck
American Civil Liberties
Union Foundation
22 East 40th Street
New York, New York 10016
(212) 725-1222

Jerry J. Berman
122 Maryland Avenue, N.E.
Washington, D.C. 20002
(202) 544-5380

Philip J. Hirschkop
108 North Columbus Street
Post Office Box 1226
Alexandria, Virginia 22313

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Attorney, Department of Justice

LARRY L. GREGG
Attorney, Department of Justice

GORDON W. DAIGER
Attorney, Department of Justice

Attorneys for Federal Defendants

APPROVED:

United States District Judge

Date: June 11, 1976

[From the Washington Post, June 22, 1975]

COLBY EXPLAINS "MISSTEPS" OF THE CIA

(By George Lardner, Jr.)

The Central Intelligence Agency conducted a hurried, cursory check of CIA misdeeds in the wake of the Watergate scandal, failed to tell the White House of its findings and destroyed some of the records of its illegal activities.

CIA Director William E. Colby said he ordered the destruction of various CIA files in 1973, but said he regarded it as a routine step at the time.

"Even before 1973, prior to that time," Colby said, "people had been burning up collections of files that we really had no business owning. This is a natural process of any bureaucracy."

Now, with the benefit of hindsight, Colby said he recognizes that he should have reported the missteps to the Justice Department, that the old standards which made the CIA virtually sacrosanct have slipped away.

The CIA director discussed these matters in an hour-long interview in his 7th-floor suite at the agency's headquarters Friday, coupling candid admissions with repeated expressions of concern about the hazards of unaccustomed public exposure.

In Colby's view, there has been too much publicity already. The agency, he insisted, has served the country far better than it realizes.

But Colby acknowledged, too, that even he had no clear idea of the abuses lurking in its past until the investigation by the Rockefeller commission was completed this month. Even more sweeping congressional inquiries lie ahead.

The seeds were planted on May 9, 1973, when then CIA Director James R. Schlesinger sent a memorandum to all employees calling for immediate reports on any questionable activities, past or present, that they might know about.

The impetus for the directive came from the Watergate scandal. The 1971 Ellsberg case burglary, which G. Gordon Liddy and E. Howard Hunt Jr. carried out with CIA technical assistance, had just come to light, and Schlesinger said he intended to do all he could "to confine CIA activities to those which fall within a strict interpretation of its legislative charter."

The result, Colby agreed, was a rush job that could not even be called a genuine investigation. The CIA inspector general's office, which handled the assignment, submitted a report just 11 days later, on May 21, 1973.

"It was an accumulation rather than an investigation, if you get the distinction," Colby said. In other words, the Schlesinger memo went to all employees. Well, the first employees it went to was the command line. And the command line basically reported what it heard down through the regular hierarchy: what do you know, what do you know, what do you know. And that was gathered together and given to the inspector general.

"In addition," Colby said, "few employees went to the inspector general with something they remembered. But . . . inspector general didn't go out and look through every file drawer in the place or anything like that."

The report included a section on association plots and schemes. Other portions were just a rehash of old inspector general reports that CIA officials pulled out of their desks, apparently including information on testing LSD on unsuspecting subjects, part of a controversial program that lasted from 1953 to 1963.

The White House was not informed, but not, by Colby's account, because of any preoccupation with the Watergate scandal. The day after Schlesinger wrote his May 9, 1973, memo, President Nixon nominated him to become Secretary of Defense, and Colby, who was then CIA deputy director for covert operations, was named to take over the spy agency.

"This one does embarrass me a bit," Colby said of the failure to notify the White House. "I think what happened, quite frankly, is that it fell between the stools—of Schlesinger's leaving and my taking over. I imagine he thought maybe I was going to take care of the National Security Council [the White House agency which is supposed to supervise the CIA] and I imagine that I thought he was."

The Justice Department also was kept in the dark by virtue of a longstanding agreement, disclosed and denounced by the Rockefeller commission, to let the CIA decide whether a crime had been committed by its employees or agents and whether security consideration precluded prosecution even when a crime had taken place.

Organized in January with the inspector general's 1973 report as one of its basic primers, the commission concluded this month that the CIA had engaged in "plainly unlawful" conduct—from burglary through bugging to the LSD testing and other activities. But Colby indicated that he never even contemplated going to the Justice Department at the time.

"In retrospect, I would say yes, I should have," the 55-year-old Colby acknowledged. "No question about it, we should have done it."

Colby said he first reached that conclusion "sometime in December"—which was the month that The New York Times disclosed some of the activities recounted in the 1973 report. The CIA director said he realized that month that "I do have an obligation to actually carry down to the Department of Justice and let them make the decision as to whether anything should be prosecuted or not."

After conferring with Schlesinger, "who in a sense did direct me" to go to Capitol Hill, Colby said he briefed both Rep. Lucien Nedzi (D–Mich.) and Sen. John C. Stennis (D–Miss.), the chairmen of the Senate and House subcommittees in charge of CIA oversight, in late May, 1973, on the agency's improprieties. But clearly, Colby agrees now, "that isn't enough."

APPENDIX 7.—CORRESPONDENCE RELATIVE TO LEGISLATIVE BILLS

THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

MAY 6 1976

Dear Madam Chairman:

This is a voluntary report by the Department of the Treasury on H.R. 12039 and H.R. 169, bills "To amend the Privacy Act of 1974". The provisions of H.R. 12039 which are of principal concern to this Department are paragraph 12(D), which would be added to 5 U.S.C. 552a(e) by subsection (2) of the bill (see page 3), and subsection (5) (see page 4), which would delete 5 U.S.C. 552a (k)(3). Subsection (c) of H.R. 169 would also delete 5 U.S.C. 552a (k)(3). The Commissioner of the Internal Revenue Service is scheduled to testify on May 11 before your Subcommittee with respect to the proposed paragraph 12(D). This report will, therefore, address subsection (5) of H.R. 12039 and subsection (c) of H.R. 169 which directly impact the Secret Service. Such impact is, in our judgment, so far reaching that this Department feels obligated to provide these comments.

Subsection (5) of H.R. 12039 and subsection (c) of H.R. 169 would amend the Privacy Act (5 U.S.C. 552a) by "striking out paragraph (3) of subsection (k) and redesignating the following paragraphs accordingly." Paragraph (k)(3) presently exempts from certain access provisions of the Privacy Act records maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of the title 18." It should be pointed out that Congress, in enacting the Privacy Act with (k)(3) as part of the Act, specifically included (k)(3) because they did not think that the exemptions in 5 U.S.C. 552a (j)(2) and (k)(2) were sufficient for Secret Service needs. The Department of the Treasury strongly objects to such deletion because it is convinced that such action will drastically curtail the flow of information that is essential, if the Secret Service is to carry out its mission. First and foremost the mission is to protect the President; however, it also includes protection of other designated persons, including Heads of State and foreign dignitaries. In view of the increasing frequency of official foreign visits, especially during this Bicentennial year, every effort possible should be made to assure that no harm comes to these officials during their stay in the United States.

The mission of protecting the President and others from harm, if it is to be successful, requires the prevention of harm--the interdiction of action before it happens. The most valuable tool for this is foreknowledge. It is, therefore, essential that the Secret Service be able to gather information bearing on its mission from whatever source, evaluate it and, if necessary, act on it. If as a result of the deletion of 5 U.S.C. 552 (k)(3) the information cannot be received and withheld from the subject of it, such individual would frequently be able to determine the probable source. When this becomes known, the usual sources of information will become reluctant to provide anything that would be meaningful because it would be traceable to them and they would become subject to the very harm that their information might help prevent happening to others. Furthermore, the disclosure of information to the subject of it raises a genuine possibility that such individual may be able to use it in a manner which would compromise the protective capability of the Secret Service either on the occasion to which the information relates or a subsequent one.

It must be emphasized again that the Secret Service gathers and uses information to prevent physical harm being inflicted on the President or other officials. It is essential that it be able to obtain the maximum amount of information which will assist in that mission. If the Secret Service cannot maintain such information in a system of records to which access by the subject of it is restricted, then its sources for such information may well not come forward because of the potential threat to their own welfare. Hence, the flow of information, which is essential, will be severely curtailed not only as to quantum but also as to specificity and significance, because these two factors are likely to permit tracing the information back to its source.

In summary, the Department of the Treasury strongly urges that 5 U.S.C. 552a(k)(3) not be stricken as proposed in subsection (5) of H.R. 12039 and subsection (c) of H.R. 169. In fact we urge the Congress to consider the ability of the Secret Service to perform its protective function by exempting the protective intelligence files of the Secret Service from the Freedom of Information Act (5 U.S.C. 552).

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

General Counsel
Richard R. Albrecht

The Honorable
Bella S. Abzug, Chairman
Subcommittee on Government Information
and Individual Rights
House Committee on Government Operations
House of Representatives
Washington, D.C. 20515

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

28 April 1976

Honorable Jack Brooks, Chairman
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your request for our comments on H.R. 169 and H.R. 12039, bills "To amend the Privacy Act of 1974."

Subsection (2) of H.R. 12039 would require agencies to inform "each person" who was the subject of any warrantless or non-consensual mail intercept, electronic surveillance or surreptitious entry, or who was the subject of a file or named in an index in connection with the so-called CHAOS, COINTELPRO, or "Special Service Staff" programs. Such notice would provide persons contacted with a statement of their right to access under the Freedom of Information Act and of their right to request amendment of records under the Privacy Act. It would also provide them with the option of requiring destruction of the records.

Before discussing the practical and privacy implications of the procedures proposed in H.R. 12039, an important problem of construction must be addressed. The Privacy Act in general applies to "individuals," defined in 5 U.S.C. 552(a)(2) as citizens of the United States or permanent resident aliens. However, H.R. 12039 would require notification of "persons." It is unclear whether the persons referenced in the bill refer to all persons commonly subsumed under that term or only the class of individuals presently covered by the Privacy Act. If the more inclusive construction is intended, the bill would require notification of subjects of necessary foreign intelligence interest who are not United States citizens, permanent resident aliens or other persons recognized as domestic entities. Such a requirement would, of course, seriously inhibit the purpose of foreign intelligence gathering activities.

An Agency-initiated notification program of the individuals contemplated in H.R. 12039 would be unworkable. Because the CHAOS program was not designed to identify individuals, but rather to examine the possibility of foreign connections with certain kinds of activity, most of the information

collected or maintained under the program is not complete enough to sufficiently identify or locate the individuals concerned. The program resulted in the accumulation of many names of individuals connected with such activities without further identifying information. A name alone, even a full name, or a name coupled with a reference to an organization or another person, does not identify the subject with sufficient clarity to assure proper identification. Also, in many cases, names are incomplete or are not coupled even with past addresses. Even where the subject can be fully identified, there is a high statistical probability that he has changed his address in the intervening years. This identification problem exists to even greater degree in the case of mail interceptions. To identify the individuals involved with any degree of certainty would require this Agency to undertake a large-scale domestic inquiry. Such an effort would necessarily require collecting additional information on individuals. This would of course defeat the purpose of this legislation and violate the recently issued Executive Order 11905.

These practical difficulties have serious privacy implications for the individuals concerned. An attempt to notify subjects based on information now available in Agency files would result in a great deal of misdirected mail circulating through the postal system. In addition, it is likely that many individuals may be incorrectly identified and thus be notified of the existence of information which was in fact related to another person. Indeed we have already confronted this problem even under existing procedures where we are able to solicit further identifying data from persons requesting information under the Privacy Act.

It would appear unnecessary to institute the notification procedures proposed in H.R. 12039 in order to inform individuals whether the Government maintains the specified records pertaining to them. The Privacy Act and the Freedom of Information Act already make adequate provision for individuals to ascertain the existence of such information. This Agency has stated on several occasions that any individual or organization seeking to determine whether the Agency holds information pertaining to them may contact the Agency, and such information, as is available pursuant to the Freedom of Information and Privacy Acts, will be released. Over 9,000 people have done so already, and this system is proving an adequate method for interested persons to exercise their rights under the Acts. The volume of requests is a solid indication that the public is aware of the access specified by the Acts.

An important and desirable aspect of existing procedures is that by responding to requests, the Agency is able to determine the current address of the individual and in those cases where it is difficult to match existing information with a particular requester, the Agency has the opportunity

to request the additional identifying information necessary to ascertain whether information the Agency has pertains in fact to such individual. This mitigates the dual problem of accurate identification and proper notification which would be inherent in the procedures proposed in H.R. 12039.

Subsection (2) of H.R. 12039 would require that the person notified be provided "the option" of requiring the Agency to destroy information improperly maintained or of requesting amendment and correction of the information. The Central Intelligence Agency has stated its intention to destroy such material, including all the information which was improperly collected or maintained under the so-called CHAOS program, when the present moratorium is lifted. Such destruction will, of course, be consistent with applicable law and Presidential directives. In addition, the Agency is in the process of reviewing all records systems to insure the information is properly held and that it is accurate, relevant, and timely. This Agency has requested the Privacy Commission to review Agency records systems to assure that they are consistent with the requirements of the Privacy Act. Accordingly, it would serve no purpose to encourage the up-dating, supplementing, or correcting of information which is bound for destruction.

In sum, an Agency-initiated notification program, such as that proposed in H.R. 12039, would be impractical as well as unnecessary. Impractical, because it would be impossible to accurately identify or to properly notify a high proportion of the individuals involved. Unnecessary, because interested individuals can already be informed under existing law and can be assured that improper records will be destroyed.

In addition, both H.R. 169 and H.R. 12039 would alter section 3(d)(2)(B)(i) of the Privacy Act, regarding an individual's right to correct personal information held by Government agencies. This Agency would have no objection to this proposed alteration.

Finally, both H.R. 169 and H.R. 12039 would strike section 3(j)(1). This section authorizes the Director of Central Intelligence to promulgate rules exempting any system of CIA records from certain requirements of the Act.

In drafting the Privacy Act, Congress recognized that "certain areas of Federal records are of such a highly sensitive nature that they must be exempted" (House Report 93-1416). Accordingly, Congress exempted systems of records "specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy" [subsection (k)(1), and Central Intelligence Agency records [subsection (j)(1)] from portions of the Act. Sections of the Act which do apply to this Agency restrict the dissemination of records to those for specific enumerated purposes, require it to maintain a listing of each disclosure of a record for at least five years, and publish annually in the Federal Register a general description of our systems of records concerning American citizens or permanent resident aliens.

The basic mission of this Agency is to provide our nation's policy-makers with the best possible intelligence on foreign developments and threats. The system of records established in the Agency is designed to support this mission. Our ability to provide accurate and current intelligence to the President, the National Security Council, and to the Congress depends heavily upon the acquisition and maintenance of productive sources and effective methods of collection and analysis. Preservation of these sources and methods is absolutely dependent on their secrecy. Technical collection efforts can often be easily nullified if the target country is aware of the collection effort. And, of course, human sources will refuse further cooperation if they believe there is a substantial danger that their cooperation will be revealed. I believe it was because of this essential secrecy that Congress, in the National Security Act of 1947, as amended (50 U.S.C. 403) directed that:

> "The Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure."

Although certain CIA information can be protected by the section (k)(1) exemption for national defense or foreign policy information, this exemption would not fully protect Intelligence Sources and Methods information contained in the Agency's system of records. An intelligence document can reveal sources and methods and warrant protection even though the substantive information conveyed does not jeopardize the national defense or foreign policy.

In sum, H.R. 169 and H.R. 12039, by striking the Agency's exemption from certain requirements of the Privacy Act, would jeopardize the Intelligence Sources and Methods which are vital to the Agency's ability to fulfill its unique mission. The Agency, by its regulations, is meeting the spirit of the Act and is responding to all requests from individuals for information pertaining to them. For the foregoing reasons, I oppose H.R. 169 and H.R. 12039.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

George Bush
Director

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-130441 April 21, 1976

The Honorable Jack Brooks
Chairman Committee on Government
Operations
House of Representatives

Dear Mr. Chairman:

By letter dated March 1, 1976, you requested our comments on H.R. 12039, 94th Congress, a bill to amend the Privacy Act of 1974. This is to advise that we have no comments to offer.

Sincerely yours,

Deputy Comptroller General
of the United States

Appendix 8.—Newspaper Articles Relating to Notice and Programs Covered by Bills

[From the Washington Post, Mar. 31, 1976]

FBI Spy Apologies Weighed

(By John M. Goshko)

Thousands of persons who were victims of FBI harrassment may soon receive letters from the Justice Department apologizing and spelling out the tactics that were employed against them.

The feasibility of such a notification program is under study by Justice Department officials, and they are expected to recommend to Attorney General Edward H. Levi that the effort be made.

Under the plan, official individual notifications would be sent to everyone the department can identify as having been a target of the FBI's domestic counterintelligence program.

Cointelpro, as it was known within the FBI, consisted of a series of campaigns between 1956 and 1971 that sought to disrupt militant political groups of the left and right and harass and discredit their members. The covert FBI activities had been ordered by the bureau's late director, J. Edgar Hoover.

Among the targets were the Communist Party, Ku Klux Klan, Black Panthers, Students for a Democratic Society and a number of organizations involved in civil rights and anti-Vietnam war activities.

In many cases, members suffered damage to their reputations in their communities or among their colleagues because the FBI fabricated evidence against them or sent anonymous or derogatory letters to their families, employers or coworkers.

Justice Department sources said the aim of a notification program would be to make partial amends by giving those who were victimized an official acknowledgement that the charges against them were false.

The study, which was ordered by Levi, is under the direction of Rex E. Lee, assistant attorney general in charge of the Civil Division, and Michael E. Shaheen Jr., chief of the department's office of professional responsibility.

[From the Washington Post, Apr. 2, 1976]

FBI Acts to Notify Snooping Targets

(By John M. Goshko)

Attorney General Edward H. Levi announced yesterday that he has established a Justice Department committee to notify an estimated several hundred persons that they were targets of past FBI harassment tactics.

The notification program will apply to victims of covert counterintelligence programs carried out by the FBI between 1956 and 1971.

Cointelpro, as it was known within the FBI, was intended to disrupt militant political groups of the left and right and harass and discredit their members. In some instances, the FBI fabricated derogatory information about target individuals and sent it to their families and employers.

Levi's announcement said that notification will be made in cases where the Cointelpro activity was improper, where it may have caused harm to the individual and where the victims are not already aware that they were targets.

Those persons who are contacted will be advised that they may seek further information about their cases from the Justice Department if they wish.

Justice Department sources estimated that the specifications set by Levi would result in notifications going to "several hundred persons." They added that decisions on what persons meet the specifications will be made by the review committee, headed by Michael E. Shaheen Jr., head of the department's Office of Professional Responsibility.

Now chairman of the special House committee investigating the CIA, Nedzi, who has recently come under fire for taking no action two years ago, "asked a lot of additional questions," Colby recalled, but was apparently satisfied with the answers he got and did not inform his colleagues.

Colby did not characterize Stennis' reaction, but he has long been a stolid defender of the CIA. Apparently both he and Nedzi accepted Colby's assurances that corrective action would be taken.

No follow-up investigation was conducted, including within the CIA, to determine whether any of the activities warranted prosecution or to find out how extensive they actually were. Repeatedly, Colby emphasized that his mind was on the future, on making sure they didn't happen again.

He said he issued "specific instructions with respect to each of the categories of activities included in the inspector general's report" on Aug. 29, 1973, banning some, laying down strict rules for others and declaring still others permissible.

The sources said that the committee will review approximately 35,000 pages of material relating to Cointelpro and will contact those persons requiring notification as they are identified. The notifications, the sources said, will be made by mail, telephone or hand-delivered letter, depending on the circumstances of each case.

All requests from contacted individuals for further information will be treated as requests for government documents under the federal Freedom of Information Act, the sources added. However, the requests will be expedited.

The sources said that no decisions have been made yet about how to handle requests from individual victims for further action, such as destruction or correction of their Cointelpro files.

This point was cited yesterday by Rep. Bella S. Abzug (D-N.Y.), who criticized the plan for not giving victims an explicit chance to have their files purged of improper materials. She announced that the House Subcommittee on Government Operations and Individual Rights, which she heads, will hold hearings on the notification program on April 13.

[From the New York Times, Apr. 2, 1976]

Levi Is Reviewing F.B.I. Surveillance

PANEL IS ASSIGNED TO STUDY DOMESTIC EFFORT AND THEN TO NOTIFY SOME TARGETS

WASHINGTON, April 1—Attorney General Edward H. Levi announced today that he had assigned a panel of Justice Department lawyers to review the Federal Bureau of Investigation's domestic counterintelligence program and, under certain circumstances, to notify its victims of actions taken against them.

In a statement given to reporters, Mr. Levi said that such notification would be made only if, in the opinion of the review board, the F.B.I.'s actions were improper and resulted in "actual harm" to an individual, and where the individuals were not already aware that they had been targets of such activities.

The counterintelligence records to be examined are those produced by the bureau's 17-year-long Cointelpro effort, which was intended to disrupt, harass and "neutralize" domestic political groups ranging from the Communist Party to the Ku Klux Klan.

One Justice Department official said that the form such notifications would take had no been decided, and that they might range from telephone calls from Justice Department lawyers to letters delivered by F.B.I. agents.

Another Justice Department official, one of the few who reportedly opposed the notification program, said that, apart from his belief that such a method was "unworkable," he was concerned that the F.B.I. would see it as an attempt by the Justice Department to "rub their noses" in the excesses of Cointelpro.

An F.B.I. spokesman said that the bureau would have no comment on Mr. Levi's announcement, but one F.B.I. agent, who asked to remain anonymous, confirmed that "the impact on morale has been very disturbing."

The agent said that the impending notifications were being viewed within the bureau as "apologies" to those whom the F.B.I. had historically opposed. "We always thought that the Communist Party were the enemy," he said, adding, "You just feel that every value you had been led to believe all these years is totally wrong."

12 SEPARATE PROGRAMS

The 12 separate Cointelpro programs implemented from 1956 to 1972, when the effort was terminated, resulted in 2,370 actions, many of which ultimately involved more than one individual.

The Justice Department official said, however, that he believed that only a "few hundred people" would eventually qualify for notification under the criteria established by Mr. Levi today.

The Attorney General conceded in his statement that "there might be difficulties in carrying out the program," but he said that care would be taken to preserve the rights to privacy of the individuals involved and that any case that presented special problems would be given his personal attention.

[From the Washington Post, Apr. 6, 1976]

COINTELPRO PLAN AGAINST BLACKS DETAILED BY FBI

(By John M. Goshko)

The FBI made public yesterday previously secret documents describing how in 1967 it instituted a "counterintelligence" program to disrupt and discredit "black nationalist, hate-type organizations."

The documents, obtained by a group of reporters under the Freedom of Information Act, involve one of the various covert campaigns conducted by the FBI under the general term Cointelpro.

These activities, which were carried on between 1956 and 1971, were ordered by then-FBI director J. Edgar Hoover to harass allegedly militant political groups of the right and left.

Disclosures by the press and Congress already have made clear that a number of black organizations were major targets of the Cointelpro activities. As a result, the documents released yesterday track over information that has become known from other sources and contain few surprises.

Of principal interest are two documents from FBI headquarters to field offices that establish when the program against black groups was started and supply some additional facts about its alms and methods.

One letter, dated Aug. 25, 1967, specified that the bureau was about to begin a program against black groups and warned field agents not to confuse it with already existing Cointelpro activities aimed at the U.S. Communist Party and related organizations or the Ku Klux Klan and "hate-type groups primarily consisting of white memberships."

"The purpose of this new counterintelligence endeavor," the letter said, "is to expose, disrupt, misdirect, discredit or otherwise neutralize the activities of black nationalist, hate-type groups, their leadership, spokesmen, membership and supporters, and to counter their propensity for violence and civil disorder."

Field agents were directed to think of ways in which such groups could be prevented from recruiting new members, discredited by leaks of harmful information to the news media or brought into conflict with each other.

In planning their campaigns, the field offices were told to keep in mind that "many individuals currently active in black nationalist organizations have backgrounds of immorality, subversive activity and criminal records. Through your investigation of key agitators, you should endeavor to establish their unsavory backgrounds."

This initial letter was followed by a "background" telegram stating that the program was being expanded to include 41 FBI field offices. It identified as primary targets "the radical and violence-prone leaders, members and followers" of the Student Nonviolent Coordinating Committee (SNCC), Southern Christian Leadership Conference (SCLC), Revolutionary Action Movement (RAM), and Nation of Islam (Black Muslim) movement.

Despite the FBI's characterization, most persons familiar with the civil rights movement would disagree with the lumping together of these groups as "radical and violence-prone."

The SCLC, originally headed by the late Rev. Dr. Martin Luther King Jr., has always been regarded as non-violent and non-radical. SNCC, which went through several changes of leadership and policy direction, did espouse some radical political positions at times, but has never been regarded by impartial observers as violence-prone.

Of the other two, RAM has always characterized itself as an adherent of revolutionary violence; and the Nation of Islam, although advocating separatism from whites, insists that its members be law-abiding. However, the Muslim movement has been troubled by internal dissension and breakaway factions whose rivalries have resulted in violence.

Past disclosures have left no doubt that various FBI offices did translate these directives into specific harassment tactics against black groups. These ranged

from an attempt by the FBI in California to instigate a gang war between rival black groups to a campaign of wiretapping and personal harassment aimed at Dr. King.

The documents released yesterday relate to the participation of the FBI's Cleveland field office in the campaign against black groups. And what they principally reveal is that agents in Cleveland, unlike those in other parts of the country, never managed to get the program off the ground.

Most of the documents are periodic progress reports stating that "at the present time, Cleveland does not have any approved counterintelligence operations being effected."

[From the Washington Post, 1976]

Levi Names 3-Man Panel To Monitor FBI Activities

Attorney General Edward H. Levi yesterday appointed a three-member Justice Department group to act as a watchdog on implementation of guidelines designed to prevent illegal domestic intelligence activities by the FBI.

The guidelines, which went into effect yesterday, were instituted by Levi to prevent repetitions of the FBI's now defunct counterintelligence programs.

Cointelpro, as the covert activities were known, was in force from 1956 until 1971. Its purpose was to disrupt and harass allegedly radical groups of the left and right such as the Communist Party, Ku Klux Klan, Black Panthers and antiwar organizations.

Disclosure of these activities by the press and Congress created a public furor and prompted Levi, who has policy direction over the FBI, to promulgate stricter rules for FBI activities in the domestic security and intelligence area.

Although there is still considerable controversy about whether the guidelines go far enough, they are intended to impose stricter controls over the infiltration of suspect organizations, electronic surveillance and the checking of a suspect's mail.

The guidelines require the submission of reports to Levi on the beginning of investigations, as well as periodic reports on their status. The Attorney General can, on the basis of these reports, decide whether specific investigations should be continued and whether various investigative techniques should be used.

The group named yesterday will be charged with processing these reports from the FBI and advising Levi on whether the guidelines are being implemented and working effectively. It also will make recommendations for changes in the guidelines if that is considered necessary.

Members of the group, all selected personally by Levi, are Jeffrey Harris, 32, who has been an assistant U.S. attorney in New York; Joseph E. diGenova, 31, a special counsel to the Senate intelligence committee, and Thomas J. Grady, 34, a trial attorney in the Justice Department's Civil Rights Division.

[From Civil Liberties, April 1976]

FBI Branded U.S. Communist Leader as Informer

The FBI's dirty tricks squad "put the snitch jacket" on a leader of the Communist Party of the USA—leading to his expulsion from the party in disgrace, civil liberties lawyer and author Frank Donner reveals in the April/May issue of *The Civil Liberties Review*.

Planting an incriminating forged letter in his car, the FBI made it appear that William Albertson, a member of the Communist Party's National Committee, had been an informer for the bureau for some time. Expelled in 1964, Albertson tried in vain, up to his death in 1972, to convince his former comrades that the informer label was false.

Donner pieced the story together after the FBI released documents about its Cointelpro (counterintelligence program) activities but failed to delete a reference to Albertson by name. Donner describes the Cointelpro activities as "the most lawless ever undertaken in modern history by our government."

The April/May issue initiates a number of changes in the two-year old *Civil Liberties Review*. It will be published six times a year instead of four; page size will be enlarged to provide a better frame for the magazine's expanded use of illustrations; it will no longer be published by John Wiley & Sons, but will be entirely under the nonprofit sponsorship of the ACLU Foundation.

Alan F. Westin, Professor of Law and Government, Columbia University, is editor of *The Civil Liberties Review*. It is designed for the intelligent, concerned

layman who wants serious, in-depth treatment of civil rights issues and events, but who does not want to burrow through the notes and citations of law reviews or academic journals.

Also in the April/May issue will be the article on the dangers of plutonium recycling by Senator Mike Gravel, mentioned in the January issue of this newspaper. (The installment of Roger Baldwin's memoirs mentioned in the same article was published in the last of the quarterly issues (Vol. II, No. 4). Copies may be obtained from John Wiley & Sons, 605 Third Avenue, New York, N.Y. 10016, for $3. Additional installments of the Baldwin memoirs will appear in *CLR* this year.)

Subscriptions to the new bimonthly *Civil Liberties Review* can be ordered by using the coupon below.

[From the New York Times, Mar. 29, 1976]

A COINTEL STORY

(By Anthony Lewis)

BOSTON, March 28.—William Albertson was a leading figure in the Communist Party of the U.S.A. until 1964. That year, a document reading like a secret informant's report to the F.B.I. was found in a car he had used. It was signed "Bill," appeared to be in his handwriting and ended by asking for "a raise in expenses."

Albertson protested that the paper was a fake. He had never spied for anyone, he said, and he had himself been a victim of F.B.I. informants. But the party leadership did not believe him. It expelled Albertson, denouncing him as a "stool pigeon" for "the ruling circles."

Most Americans would find it hard to imagine being pained at expulsion from a group as unpopular as the Communist Party, but communism had been William Albertson's life. He lost his friends and his job. His family was ostracized, threatened. A school took a scholarship from his youngest child, on the theory that F.B.I. money was ample. Albertson had transient work until he died in 1972, at the age of 61, in a grotesque accident.

Now, a dozen years later, it appears that Albertson was right about the incident that destroyed him: The F.B.I. manufactured it. The story is told by Frank Donner in the April-May issue of The Civil Liberties Review, a valuable independent magazine published by the American Civil Liberties Union Foundation.

The truth came out by ironic mischance. Last year a journalist asked the F.B.I. for documents about its past efforts to disrupt white hate groups such as the Ku Klux Klan. When the papers were released, one was on another subject.

It was a report to bureau officials, dated Jan. 6, 1965, that said a high functionary of the Communist Party had been expelled "through our counterintelligence efforts." The name of the "functionary" was deleted at the beginning of the document. But, perhaps through clerical error in the release, it was left in farther down. The name was Albertson.

The Albertson story is one small example of what went on in Cointelpro, the covert F.B.I. program of J. Edgar Hoover's late years to injure those he disliked. Cointelpro has had less public attention than C.I.A. illegalities and abuses. But in a way it was a special horror: An effort by the American Government to set Americans against each other.

Some Cointelpro activities have already come to light: anonymous letters to the spouses of civil rights sympathizers charging infidelities (and some marriages did then break up); attempts to stir up warfare between black activist groups; and, best-known, the letter to Dr. Martin Luther King Jr. encouraging him to commit suicide. More are expected to be detailed soon in the report of the Senate Intelligence Committee.

Cointelpro activities came to an end in 1971 and 1972, according to Justice Department officials. But of course that is not a reason to forget the whole thing. The question now is how to make sure that such horrors do not happen again.

One step has already been taken: the adoption of internal rules by the Justice Department itself. Attorney General Edward H. Levi has approved guidelines that restrict the F.B.I. to the function of aiding in enforcement of the law. The next logical step is for Congress to write some rules into permanent statutory form.

Public reassurance also requires an official effort to acknowledge and deal with the wrongs done in the Cointel program. For example, those who committed abuses might be prosecuted, or disciplined if they are still Government employees.

That is not so easy. The Cointel files often leave unclear exactly what happened. It would be hard to prove specific criminal offenses, and in most cases the statute of limitations has run. But Attorney General Levi has been trying to find an appropriate course of action, and a decision is near on one proposal.

The idea is to notify all the victims of Cointelpro who can be identified—tell each one, privately, what was done to him or her. They could then decide what to do or say, or what action to urge on the Justice Department. At least the survivors would know—as the Albertson family would not otherwise have known, but for the accidental release of that paper.

William Albertson's widow said the other day that she had never expected to know the truth, "and I don't think we ever would except for Watergate." The need for openness is one lesson of Cointelpro. The other is the need for officials to respect the law. In the case of William Albertson, officials took it upon themselves to punish someone who had violated no law. His views were unpopular. But the principle we treasure in the Constitution, Justice Holmes said, is "not free thought for those who agree with us but freedom for the thought that we hate."

Should the Federal Government's tax collectors be in the crime-busting business?

Big Brotherhood at IRS

LOUISE BROWN

Robert K. Lund, a sandy-haired and attractive middle-aged man, shares a concern of many other Americans: He sees an "obvious decline in respect for the law as well as deteriorating standards of ethics" in the nation. But there is one important difference between Lund and most of his fellow citizens. For almost six years, until his retirement from the Internal Revenue Service in 1972, Lund was in a unique position to act upon his concerns. He was assistant director and then director of the IRS intelligence division, which has broad authority to pry into taxpayers' affairs.

Lund's views are supported by his former boss, William A. Kolar, intelligence director in the IRS national office from 1966 until 1970, and by another former IRS official, John J. Olszewski, who succeeded Lund as director in 1972. Successively, the three men were responsible for the agency's intelligence activities during the Vietnam war protests, the Watergate scandals, and until Olszewski retired from the agency under fire in May 1975.

Kolar, Lund, and Olszewski directed programs and policies involving the 2,700 "special"—that is, intelligence—agents attached to the agency's national and field offices. These agents seek out violations among willful law breakers, including those engaged in "subversive activities," organized crime, and political corruption. The IRS intelligence efforts supplement those of other law enforcement agencies, and are not necessarily directly tax-related.

The Federal Bureau of Investigation, the Drug Enforcement Administration, the Customs Bureau, and other agencies welcome IRS assistance for three reasons: First, the IRS provides them with a unique reservoir of data supplied to it voluntarily for tax purposes. Second, it has powers greater than any other Government agency to examine taxpayers' books and records, as well as documents held by third parties, without a search warrant. Third, the IRS can take property by levy or seizure without a court order.

Urged on by Congress and the Executive, the IRS intelligence division has become a tool for general criminal law enforcement. As such, it has conducted drives against illegal bookmaking, racketeering, narcotics trafficking, and, through the Federal Strike Force, organized crime.

Now charges of invasion of privacy and illegal acts by special agents have raised questions about whether the IRS ought not to get out of the crime-busting business and confine itself to tax law enforcement.

On July 29, a House Government Operations Subcommittee asked the former intelligence directors, Lund, Kolar, and Olszewski, for their views. Lund pointed out that the question was not new, but had been debated for at least twenty years. A vigorous proponent of IRS participation in crime drives, Lund said the agency should investigate "those who represent a menace to society on the assumption that those who disrespect other laws are also likely to violate our tax laws." He added that the intelligence division "must stand in the forefront as a Government arm capable of bringing justice, where others fail, to those who defy law and order."

IRS Commissioner Donald C. Alexander disagrees. In August 1974, he told American Bar Association members that if the IRS continued to place criminal enforcement or other criteria before revenue collection and enforcement, the agency was in danger of losing both effective use of its limited resources and the public's faith in an impartial, non-political system. At a New

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York State Bar Association meeting in June 1975, Alexander went further. He said: "If the IRS becomes entangled in information gathering, confidential informants, and fishing expeditions relating to persons who are merely suspected of committing non-tax-related crimes, public confidence in IRS as the civil tax administrator, with only ancillary criminal investigative powers, could be seriously damaged." Further, he said the agency could not enforce the tax laws unless the general public assists by believing in and complying with the tax system.

Alexander followed up his public statements with moves to de-emphasize the IRS role in general law enforcement and to strengthen controls over special agents. These moves have landed him in deep trouble. Special agents in New York have taken him to court, protesting an order to name their confidential informants, and, since September 1975. Alexander has become the target of anonymous and unsubstantiated charges involving his personal integrity.

Behind the allegations, according to Alexander, are dissidents within the agency who oppose his new policies and his efforts to make them follow the law. Alexander instituted the policies because IRS special agents have themselves been under fire since early 1975 for alleged improper and illegal intelligence activities. The charges, first published a year ago in *The Philadelphia Bulletin*, centered around the agency's Intelligence Gathering and Retrieval System (IGRS), a program conceived under Kolar in 1969, tested under Lund, and put into nationwide operation in 1973 under Olszewski.

The new program institutionalized IRS intelligence "fishing expeditions" by directing agents to collect generalized background intelligence, in addition to gathering data for specific cases. In 1969, a task force headed by Olszewski, then intelligence chief for the Detroit district, explained why the intelligence division needed the new tool. The task force report said it was because of the "growing menace of organized crime, racketeering and corruption," and of "subversive and radical elements" which used the sophisticated methods of organized crime to "further break down the basic fibers of our society."

The system detached some IRS special agents from their work on specific cases and assigned them to special intelligence-gathering units in district and local offices across the country. Using confidential informants and other sources, agents collected the data and IGRS clerks fed references to it into computers. By January 15, 1975, computers in forty-five of the agency's fifty-eight district offices contained references to 165,442 individuals and other "entities," according to IRS figures.

Charges carried by *The Philadelphia Bulletin* and *The Miami News* questioned the kind of data agents collected, the methods they employed, and the purposes for which the data were used. Unnamed IRS sources alleged that special agents in Florida paid confidential informants to spy on the sex and drinking habits of local political figures, including three Federal judges. The newspapers reported that the Miami IGRS unit compiled data on President Nixon's "enemies," and that IGRS data went to the White House, the FBI, and the CIA. Other reports charged that IRS agents had engaged in illegal wiretapping and that their confidential informants were involved in burglary and theft.

On June 23, after conducting an in-house investigation of the charges, the IRS inspection division issued a report which confirmed that some of them were true. The report covered an in-depth probe of IRS intelligence gathering in the Jacksonville district, with spot checks in Manhattan, Chicago, and Los Angeles.

Among other things, the IRS report showed that agents entered the names of individuals and groups not suspected of tax violations into the computers; that they indexed references to raw, unsubstantiated, and non-tax-related data; and that other Government agencies had access to the information. The report showed that IGRS operations had resulted in possible invasions of privacy and other improper or possibly illegal acts.

How had the system—designed to protect society from criminals—come to violate the rights of the people it was supposed to protect? The June 23 inspection report, and IRS documents obtained by the Public Citizen Tax Reform Research Group (TRRG) under the Freedom of Information Act, give some answers.

IRS guidelines, according to the report, were so broad that almost any individual or group could qualify for the computerized list. IRS manual orders said that documents indexed should relate to specific subjects and involve "financial transactions with potential tax consequences, illegal activities with tax potential, or other illegal activities within the agency's investigative jurisdiction."

As a result, agents could conceivably index the name of any person who sold his family home for a profit, since the transaction could have "tax potential." In Cleveland, the intelligence chief said in a May 17, 1974, memo: "It is not necessary that there be an allegation or even an appearance of wrongdoing on the part of the taxpayer involved, and the appearance of a person's name in our index is merely a reference to the fact that we have information of possible tax consequence to him."

The IRS report showed that many of the names came from newspaper articles, and that the names of members of Congress as well as Commissioner Alexander's name appeared in the computerized indexes. A list from the Los Angeles District IGRS index—sent anonymously to the press—contained references to the American Legion, former U.S. Ambassador Walter Annenberg, Representative Augustus Hawkins, Los Angeles Mayor Thomas Bradley, former U.S. Attorney General Ramsey Clark, and a host of Hollywood figures.

As to the type of data collected, the report confirmed

charges that IGRS indexes in the Jacksonville district held references to the sex and drinking habits of local political figures. Much of the material, the report noted, was gathered by confidential informants paid on a regular weekly or monthly basis, contrary to IRS manual orders. Tests in Chicago, Manhattan, and Los Angeles showed that, as in Jacksonville, much of the information indexed was not tax-related. However, in these cities it did not include information on sex and drinking habits.

The IRS memos show that other types of data indexed in the computers included FBI and local police reports, tax returns, memos of conversations, mail-watch reports, work permits, applications for telephone service, telephone toll call records, credit reports, license plate checks, and property tax transfer records.

IRS manual orders did not caution agents that innocent individuals might come under suspicion because their names were in the files, although it was clear that other agencies had access to the data. Apparently oblivious to such dangers, the Louisville intelligence chief wrote, "I trust that the system proposed by the Task Force will tie in with the nationwide system now being implemented which will permit all local, state, and national law enforcement agencies to obtain information regarding law violators in a very short time by the use of a teletype system."

Although the IRS did not join in such a system, agents could turn their files over to such agencies as the Justice Department, which have authority to examine Federal income tax returns. And the June 23 report noted that "some types of information is exchanged with other agencies who participate in narcotics and strike force activities."

The IRS review found that many of the problems connected with IGRS were caused by poor supervision. One free-wheeling special agent, nominally attached to the Miami Strike Force, operated for two-and-one-half years without management direction. Although he paid $45,000 to confidential informants to collect personal data on Miami political figures, and built-up a computerized index of 6,000 items of unsubstantiated data on hundreds of individuals in the Miami area, the operation netted the IRS little or nothing in the way or results, according to the report. Further, two of his informants were connected with charges involving theft and burglary of the office of a candidate for the U.S. House of Representatives.

Asked by the House Government Operations Subcommittee to explain how the IGRS system got out of hand, Kolar, Lund, and Olszewski said that they were not to blame. The national intelligence director, Kolar explained, has no authority over the employes of the division except for those in the headquarters office.

Olszewski said supervisory responsibility flows from the IRS commissioner through the regional commissioners to the fifty-eight district directors. "If things go wrong," he said rather bitterly, "the office of the director, intelligence, should have known and prevented it. If they go right, the respective IRS district director or IRS regional commissioner did a fine job." All three former directors said the national office intelligence division should have higher status as well as direct authority over special agents in the field.

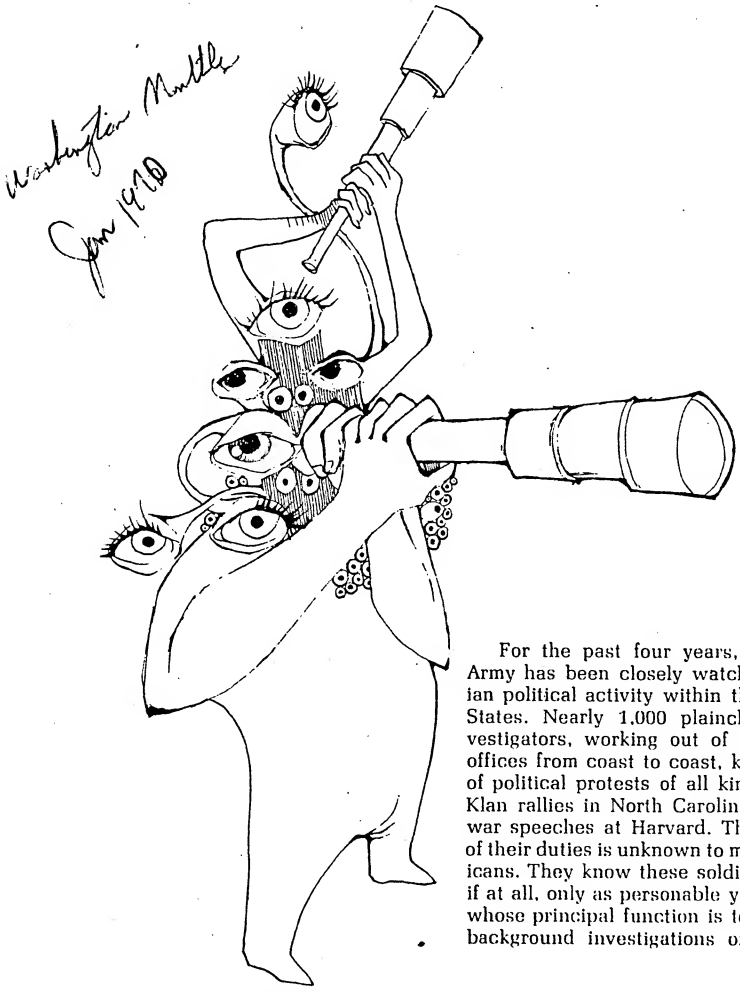
But the view that direct authority would provide tighter controls over agents' activities is open to question. An April 1975 IRS inspection report shows that undercover agents directly responsible to the national office intelligence division engaged in criminal acts without the director's knowledge. One was arrested and prosecuted for conducting a gambling and illegal liquor sales operation, while another received income from extortion, sale of stolen property, and fraudulent business schemes.

Currently, Commissioner Alexander is wrestling with these and other problems which beset his agency. He has taken steps to lower IRS participation in general law enforcement activities and to tighten controls on information gathering. Under new IRS guidelines, information gathering must now be both directly tax-related and necessary to the administration of the tax law. Employes may not keep files on taxpayers unless specifically authorized to do so. All local and district-level agents must send reports from confidential informants to intelligence chiefs in the ten regional IRS service centers for review. Payments to confidential informants are prohibited unless approved by the IRS assistant commissioner for compliance in Washington. Spending on generalized intelligence gathering has been cut from $11.8 million to $4.3 million a year, according to an IRS spokesman. Finally, the intelligence gathering and retrieval units have been abolished, although the computerized indexing system has been left intact.

The present effort to drive Alexander from office may reflect the fact that these strict new measures are taking effect. But the attack on him obscures the real issues—whether or not the IRS has a duty to control its intelligence agents, and whether the IRS should be using its extraordinary powers, given to it for tax purposes, to enforce laws which are the responsibility of other Federal agencies.

These issues should not be decided by an internal struggle within the IRS. They should be decided by Congress. Congress could give the same extraordinary powers enjoyed by the IRS to the Federal Bureau of Investigation, the Drug Enforcement Administration, the Customs Bureau, and other Federal agencies. If it hesitates to do so (and with good reason), it should take a careful look at what is happening now. There is no place in the tax system for misuse of the tax law. The system will not work if people cannot believe in the fairness and integrity of the IRS. And they have good cause to protest if the tax laws are used against them punitively for non-tax purposes. Congress needs to face this problem squarely, and take steps to resolve it. □

CONUS Intelligence:



For the past four years, the U.S. Army has been closely watching civilian political activity within the United States. Nearly 1,000 plainclothes investigators, working out of some 300 offices from coast to coast, keep track of political protests of all kinds—from Klan rallies in North Carolina to anti-war speeches at Harvard. This aspect of their duties is unknown to most Americans. They know these soldier-agents, if at all, only as personable young men whose principal function is to conduct background investigations of persons

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The Army Watches Civilian Politics

by Christopher H. Pyle

being considered for security clearances.

When this program began in the summer of 1965, its purpose was to provide early warning of civil disorders which the Army might be called upon to quell. In the summer of 1967, however, its scope widened to include the political beliefs and actions of individuals and organizations active in the civil rights, white supremacy, black power, and anti-war movements. Today, the Army maintains files on the membership, ideology, programs, and practices of virtually every activist political group in the country. These include not only such violence-prone organizations as the Minutemen and the Revolutionary Action Movement (RAM), but such non-violent groups as the Southern Christian Leadership Conference, Clergy and Laymen United Against the War in Vietnam, the American Civil Liberties Union, Women Strike for Peace, and the National Association for the Advancement of Colored People.

The Army obtains most of its information about protest politics from the files of municipal and state police departments and of the FBI. In addition, its agents subscribe to hundreds of local and campus newspapers, monitor police and FBI radio broadcasts, and, on occasion, conduct their own undercover operations. Military undercover agents have posed as press photographers covering anti-war demonstrations, as students on college campuses, and as "residents" of Resurrection City. They have even recruited civilians into their service—sometimes for pay but more often through appeals to patriotism. For example, when Columbia University gave its students the option of closing their academic records to routine inspection by government investigators, the 108th Military Intelligence Group in Manhattan quietly persuaded an employee of the Registrar's Office to disclose information from the closed files on the sly.

Typical of the hundreds of reports filed by Army agents each month are the following, taken from the unclassified intelligence summary for the week of March 18, 1968:

> PHILADELPHIA, PA: A. THE PHILADELPHIA CHAPTER OF THE WOMEN'S STRIKE FOR PEACE SPONSORED AN ANTI-DRAFT MEETING AT THE FIRST UNITARIAN CHURCH WHICH ATTRACTED AN AUDIENCE OF ABOUT 200 PERSONS. CONRAD LYNN, AN AUTHOR OF DRAFT EVASION LITERATURE, REPLACED YALE CHAPLAIN WILLIAM SLOANE COFFIN AS THE PRINCIPAL SPEAKER AT THE MEETING. FOLLOWING A QUESTION AND ANSWER PERIOD, ROBERT EDENBAUM OF THE CENTRAL COMMITTEE FOR CONSCIENTIOUS OBJECTORS STATED THAT MANY PHILADELPHIA LAWYERS WERE ACCEPTING DRAFT EVASION CASES. THE MEETING ENDED WITHOUT INCIDENT.
>
> B. REV. ALBERT CLEAGE, JR., THE FOUNDER OF THE BLACK CHRISTIAN NATIONALIST MOVEMENT IN DETROIT, SPOKE TO AN ESTIMATED 100 PERSONS AT THE EMMANUEL METHODIST CHURCH. CLEAGE SPOKE ON THE TOPIC OF BLACK UNITY AND THE PROBLEMS OF THE GHETTO. THE MEETING WAS PEACEFUL AND POLICE REPORTED NO INCIDENTS.

CHICAGO, ILL: APPROXIMATELY 300 MEMBERS OF VETERANS FOR PEACE AND WOMEN FOR PEACE HELD A PEACEFUL DEMONSTRATION AT THE MUSEUM OF SCIENCE AND INDUSTRY PROTESTING AN EXHIBIT BY THE US ARMY. SEVERAL DEMONSTRATORS ENTERED THE BUILDING IN SPITE OF WARNINGS BY MUSUEM OFFICIALS AND 6 WERE ARRESTED ON CHARGES OF DISORDERLY CONDUCT, RESISTING ARREST AND CRIMINAL TRESPASSING. FIVE OF THOSE ARRESTED WERE JUVENILES.

To assure prompt communication of these reports, the Army distributes them over a nationwide wire service. Completed in the fall of 1967, this teletype network gives every major troop command in the United States daily and weekly reports on virtually all political protests occurring anywhere in the nation.

The Army also periodically publishes an eight-by-ten-inch, glossy-cover paperback booklet known within intelligence circles as the "blacklist." The "blacklist" is an encyclopedia of profiles of people and organizations who, in the opinion of the Intelligence Command officials who compile it, might "cause trouble for the Army." Thus it is similar to less formal lists which the Department of Health, Education, and Welfare has maintained to exclude politically unpopular scientists from research contracts and consultant work.

Sometime in the near future the Army will link its teletype reporting system to a computerized data bank. This computer, to be installed at the Investigative Records Repository at Fort Holabird in Baltimore, eventually will be able to produce instant print-outs of information in 96 separate categories. The plan is to feed it both "incident reports" and "personality reports." The incident reports will relate to the Army's role in domestic disturbances and will describe such occurrences as bombings, mass violence, and arms thefts. The personality reports—to be extracted from the incident reports—will be used to supplement the Army's seven million individual security-clearance dossiers and to generate new files on the political activities of civilians wholly unassociated with the military.

In this respect, the Army's data bank promises to be unique. Unlike similar computers now in use at the FBI's National Crime Information Center in Washington and New York State's Identification and Intelligence System in Albany, it will not be restricted to the storage of case histories of persons arrested for (or convicted of) crimes. Rather it will specialize in files devoted exclusively to descriptions of the *lawful* political activity of civilians. Thus an IBM card prepared many months ago for the future computer file of Arlo Tatum, executive secretary of the Central Committee of Conscientious Objectors, contains a single notation—that Mr. Tatum once delivered a speech at the University of Oklahoma on the legal rights of conscientious objectors.

Because the Investigative Records Repository is one of the federal government's main libraries for security clearance information, access to its personality files is not limited to Army officials. Other federal agencies now drawing on its memory banks include the FBI, the Secret Service, the Passport Office, the Central Intelligence Agency, the National Security Agency, the Civil Service Commission, the Atomic Energy Commission, the Defense Intelligence Agency, the Navy, and the Air Force. In short, the personality files are likely to be made available to any federal agency that issues security clearances, conducts investigations, or enforces laws.

Headquarters for the collection and coordination of this information is a wire-mesh "cage" located inside a gray metal warehouse at Fort Holabird. The official designation of the office is "CONUS Intelligence Branch, Operations IV, U.S. Army Intelligence Command." CONUS is the Army's acronym

for Continental United States. Direction of this program is in the hands of Major General William H. Blakefield, head of the U.S. Army Intelligence Command at Fort Holabird. Established in 1965, the Command coordinates the work of a number of counterintelligence "groups" formerly assigned to the G-2 offices of the major stateside Armys. Accordingly, its principal function is not to collect intelligence but to protect the Army from espionage, sabotage, and subversion. Its main job is to investigate persons being considered for security clearances and to inspect military installations for adequate physical, wire-communications, and document security.

CONUS Intelligence Branch, also known as "Ops Four," is commanded by a major and run by a civilian. They supervise the work of about a dozen persons, who work in shifts around the clock. Most are WAC typists who operate the teletype consoles that link the Intelligence Command to the Pentagon and to intelligence units around the country. It is here that reports from agents are received, sorted, and retransmitted. Because its staff is small and the volume of reports large, Ops Four rarely has the time to verify, edit, or interpret the reports before passing them on to "user organizations."

Daily recipients of this raw intelligence include all of the Army's military intelligence groups within the United States, riot-control units on stand-by alert, and the Army Operations Center at the Pentagon. The Operations Center, sometimes called the "domestic war room," is a green-carpeted suite of connecting offices, conference rooms, and cubicles from which Army and Defense Department officials dispatch and coordinate troops that deal with riots, earthquakes, and other disasters. Recipients of weekly CONUS intelligence summaries, also prepared at Fort Holabird, include not only those on the daily distribution, but such unlikely organizations as the Army Materiel Command, the Military District of Washington, the Air Defense Command, and Army headquarters in Europe, Alaska, Hawaii, and Panama.

What is perhaps most remarkable about this domestic intelligence network is its potential for growth. Uninhibited by Congressional or Presidential oversight, it has already expanded to the point where it in some ways rivals the FBI's older internal-security program. If the Army's fascination with the collection of domestic intelligence continues to grow as it has in the recent past, the Intelligence Command could use military funds to develop one of the largest domestic intelligence operations outside of the communist world. Before this happens, the American public and its elected representatives ought to demand a say in the development of this program.

The Army's Needs

Intentionally or not, the Army has gone far beyond the limits of its needs and authority in collecting domestic political information. It has created an activity which, by its existence alone, jeopardizes individual rights, democratic political processes, and even the national security it seeks to protect.

There is no question that the Army must have domestic intelligence. In order to assist civilian authorities, it needs maps and descriptions of potential riot or disaster areas, as well as early warning of incidents likely to provoke mass violence. Before trusting its employees or prospective employees with military secrets, it has to look into their past behavior for evidence of disloyalty or unsuitability. The Army also must investigate train wrecks, fires, and other disasters which may disrupt its lines of supply. And where ultra-militant groups seek to attack military installations, destroy files, or abuse sol-

diers, it has the right and obligation to keep informed about the groups' specific objectives, plans, and techniques.

The Army needs this kind of information so that it can fulfill long-established, legitimate responsibilities. But must it also distribute and store detailed reports on the political beliefs and actions of individuals and groups?

Officials of the Intelligence Command believe that they must. Without detailed knowledge of community "infrastructure," they argue, riot-control troops would not be able to enforce curfews or quell violence. To support this contention, they cite the usefulness of personality files and blacklists in breaking up guerrilla organizations in Malaya and South Vietnam. One early proponent of this view was the Army's Assistant Chief of Staff for Intelligence during 1967-1968, Major General William P. Yarborough. At the height of the Detroit riots of 1967 he instructed his staff in the domestic war room: "Men, get out your counterinsurgency manuals. We have an insurgency on our hands."

Of course, they did not. As one war-room officer who attempted to carry out the General's order later observed: "There we were, plotting power plants, radio stations, and armories on the situation maps when we should have been locating the liquor and color-television stores instead." A year later the National Advisory Commission on Civil Disorders reached a similar conclusion about the motives of ghetto rioters. "The urban disorders of the summer of 1967," it declared unequivocally, "were not caused by, nor were they the consequence of, any organized plan or 'conspiracy.'" After reviewing all of the federal government's intelligence reports on 23 riots, it found "no evidence that all or any of the disorders or the incidents that led to them were planned or directed by any organizations or groups, international, national, or local."

Intensive investigations subsequently conducted by local police departments, grand juries, city and state committees, and private organizations have concurred. One of the more recent, a study of 1968 "urban guerrilla" activities by the Lemberg Center for the Study of Violence at Brandeis University, is typical. It found that press and police accounts of shooting incidents were grossly exaggerated. While acknowledging that there had been "a few shoot-outs with the police" some of which "may have been planned," the Center concluded that there was "no wave of uprisings and no set pattern of murderous conflict" from which one could predict organized violence even remotely resembling guerrilla warfare.

But even if there were grounds for making such a prediction, the Army's case for personality files and blacklists would remain weak. The purpose of these records, according to counter-insurgency manuals, is to facilitate the selective arrest of guerrillas and insurgents. However, within the United States the Army has no authority to round up suspects the moment civilians take up arms. The seizure of civilians on suspicion of conspiring or attempting to overthrow the government by unlawful means or of inciting people to crime is, and continues to be, the responsibility of local and state police and of the FBI. The President may order Army units to help state or federalized National Guard troops keep the peace or fight guerrillas, but the Army does not acquire authority to arrest civilians unless and until civilian law enforcement has broken down and a declaration of martial law puts all governmental authority in the area of conflict in the hands of the military. In that highly remote circumstance, the Intelligence Command might have some need for personality files and blacklists on criminally inclined, politically motivated civilians. By then, however, it certainly would

have full access to the more extensive and up-to-date files of the civilian agencies and thus would not have had to prepare its own.

The Army's need to keep its own dossiers on the politics of law-abiding citizens and groups makes even less sense. So long as there is a possibility that peaceful protests may get out of hand, some surveillance undoubtedly is in order. But must the Army conduct it? Are its agents and record keepers more competent than those of the FBI or of the police departments of the cities in which large demonstrations typically occur? Are the civilian law enforcement agencies so uncooperative that the Army must substantially duplicate their efforts ?

More extraordinary still is why the Intelligence Command each week alerts military headquarters in Alaska, Hawaii, Panama, and Europe to stateside non-events like the following:

> MIAMI, FLA: A SPOKESMAN FOR THE SOUTHERN STUDENTS ORGANIZING COMMITTEE ANNOUNCED PLANS FOR A DEMONSTRATION TO BE HELD ON THE CAMPUS OF THE UNIVERSITY OF MIAMI IN THE MORNING. ACCORDING TO THE SPOKESMAN, A GROUP OF ANTI-WAR/DRAFT SUPPORTERS WILL PARTICIPATE IN THE DEMONSTRATION.
>
> PHILADELPHIA, PA: MEMBERS OF THE VIETNAM WEEK COMMITTEE COMPOSED LARGELY OF PROFESSORS AND STUDENTS OF THE UNIVERSITY OF PENNSYLVANIA, WILL CONDUCT A "SLEEP-IN" TO PROTEST THE SCHEDULED APPEARANCE OF DOW CHEMICAL COMPANY RECRUITERS ON CAMPUS. THE NEXT DAY, 19 MARCH, THE SAME ORGANIZATION WILL SPONSOR A PROTEST RALLY ON CAMPUS.

Perhaps the best answer to all of these questions is that much of the CONUS intelligence program serves no military need at all. But if this is so, then where does the Army get the authority to run it?

The Army's Authority

According to the Nixon Administration, authority for this kind of program comes from the Constitution. So, at least, the Justice Department claimed last June in a brief defending the FBI's failure to obtain search warrants before tapping telephone calls of what were then the "Chicago Eight." The Justice Department argued that Article Two of the Constitution authorizes the President and his agents to engage in whatever "intelligence-gathering operations he believes are necessary to protect the security of the nation" and that this authority "is not dependent upon any grant of legislative authority from Congress, but rather is an inherent power of the President, derived from the Constitution itself." Thus, the Department contended, "Congress cannot tell the President what means he may employ to obtain information he needs to determine the proper deployment of his forces."

If this is so, then Army agents do have the authority to undertake any surveillance that does not run afoul of the Constitution and the courts: indeed, they can investigate anything that is normally investigated by the federal government's civilian agencies. Moreover, they do not have to obey laws like the Omnibus Crime Control Act of 1968, which forbids most wiretapping and electronic eavesdropping without prior judicial authorization in the form of a warrant.

Fortunately, the "inherent powers doctrine," as this theory is called, has few supporters. The courts have never accepted the proposition that Congress is powerless to prescribe how the President shall exercise his executive powers. Indeed, in 1952, the Supreme Court rejected President Truman's claim to inherent power to seize the nation's steel mills to avert a strike which threatened the flow of equipment and supplies to American troops fighting in Korea. If there were no constitutional Presidential power to meet that emergency, it is

unlikely that one exists to authorize the intelligence powers which the government claims today.

It is far more probable that the courts would endorse a conflicting view: that the Army's authority to collect domestic intelligence is limited by, and can only be inferred from, those laws which traditionally mark off the Army's responsibility for law enforcement from that of other agencies. These include not only the statutes which restrict the Army to a back-up function in times of riot, but the laws which assign surveillance of unlawful political activity within the United States to the FBI and the Secret Service. Other sources of the Army's authority include the Uniform Code of Military Justice, which permits investigation of unlawful political activity within the armed services, and those laws and federal-state agreements under which the Army governs many of its installations. These rules, and not the vague provisions of Article Two, are the legitimate sources of the military's domestic-intelligence powers.

Yet even if the current Administration's claim to an inherent constitutional power to watch lawful political activity were to be accepted by the courts, the surveillance itself probably would be forbidden by the Bill of Rights. The reason is the chilling effect which knowledge of surveillance has upon the willingness of citizens to exercise their freedoms of speech, press, and association, and their right to petition the government for redress of grievances.

Ten years ago the federal courts would not have accepted this contention. Then the courts were hesitant even to accept constitutional challenges to the government's collection of political information when the plaintiffs could prove that the investigators had no other purpose than to deter them from exercising their rights under the First Amendment. Recently, however, the courts have begun to accept the proposition that vague and overbroad laws and administrative actions are unconstitutional if they inhibit the exercise of those rights, regardless of whether that effect was intended.*

The Program's Impact

Beyond the Army's need for the present

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* Typical of this growing body of constitutional interpretation is the 1965 case of *Lamont v. Postmaster General*. There the Supreme Court struck down a federal statute which authorized the Post Office to suspend delivery of unsolicited mail which the government agents regarded as "Communist political propaganda" until the addressee returned a reply post card declaring that he wished to receive the mail. The Court, in a unanimous opinion, held that the effect of this practice, whatever the government's purpose, was to abridge freedom of speech by inhibiting the right to read.

Even more on point is the decision of a New Jersey Superior Court which last August declared most of that state's domestic intelligence system unconstitutional. In *Anderson v. Sills*, a suit filed by the America Civil Liberties Union on behalf of the Jersey City branch of the NAACP, the court held: "The secret files that would be maintained as a result of this intelligence system are inherently dangerous, and by their very existence tend to restrict those who would advocate... social and political change."

Had the New Jersey authorities been able to show a more urgent need for the records, the court might not have taken such a categorical position. But the police, like the Army, had cast their net so widely that it was bringing up huge quantities of information on wholly lawful political activities. Accordingly, the court brushed aside the state's claim to good intentions and found that the program had a chilling effect upon the exercise of First Amendment rights. It ordered all forms and files destroyed, "except where such information will be used to charge persons with specifically defined criminal conduct."

If people are likely to be deterred in the exercise of their rights by state intelligence systems, they undoubtedly will be inhibited by knowledge that reports of individual participation in public demonstrations are being made daily to the Pentagon, selected troop units, and an interagency data bank at Fort Holabird. Thus, even if the Army's collection of personality files and blacklists is not limited by legislation, it still may be unlawful.

CONUS intelligence program and its authority to pursue it lies the matter of its impact upon the public interest. In particular, there is its effect upon the rights of individuals, the democratic process, and the nation's security.

The impact which the program can have upon the exercise of political rights needs no further explication. The threat it poses to job rights and privacy, however, may not be so apparent.

Like the freedom from inhibitory surveillances, the job rights threatened are rights in the making. As yet no one has established a legal right to a job that requires a security clearance or to a security clearance essential to a job. Nevertheless, in recent years the courts have begun to recognize that those who already hold federal jobs and security clearances have a right not to be deprived of either without just cause or, at the very least, without the rudiments of fairness. The impending marriage of the CONUS intelligence wire service to a computer could nullify even this protection, by filling security-clearance dossiers with unverified and potentially erroneous and irrelevant reports. These reports would then be used to determine who should, and who should not, receive security clearances.

If the men and women who adjudicate security clearance were competent to evaluate such unreliable information, its inclusion in security files might be less cause for concern. Unfortunately, they are not. The most highly trained adjudicators—civilians employed by the stateside army commands—receive only nine days of job instruction on loyalty determinations at the Army Intelligence School. Moreover, this training does not even touch upon the subject of suitability, although almost 98 per cent of all clearances denied today are ostensibly rejected on that ground. The least trained adjudicators—intelligence officers assigned to field commands—receive exactly two classroom hours on loyalty and two on suitability while being trained to become investigators. Because of this extremely brief training, it is not unusual for an adjudicator to conclude that a person arrested in connection with a political protest is not suited for a security clearance, regardless of the circumstances of his arrest, the legality of his detention, or his innocence of the charges.

The adjudicators' lack of training is compounded by security regulations which permit—indeed, seem to require—the denial of clearances on less evidence than would support a magistrate's finding of "probable cause." In other words, it is not a question of whether reliable evidence indicates that the individual cannot be trusted with state secrets, but of whether the granting of the clearance would be "clearly consistent with the interests of national security." No one really knows what this ambiguous phrase means, but in practice it frequently is used to justify findings of guilt by association. For example, soldiers and civilian employees of the Army with foreign-born spouses are virtually blocked from jobs requiring access to especially sensitive intelligence. Their association with a spouse who once "associated with foreigners" is taken as proof of their vulnerability to recruitment by foreign agents. Moreover, in nearly all other cases, adjudicators usually have to make their decisions without knowing the source of the evidence, without hearing the accused confront his accusers, or without hearing the accused defend himself with knowledge of their identity.

Given the tenuousness of the right to due process under these conditions, the influx of CONUS intelligence reports can make the system even more unjust than it is now. At the present time, little information on political activity is developed in the course of most background investigations. Army investigations, in particular, tend to be

superficial; in some sections of the country shortages of personnel, caused by the war in Vietnam, have forced the Intelligence Command to abandon interviews of character references in favor of questionnaires-by-mail as its main means of inquiry. But if these questionnaires were to be supplemented by CONUS political reports, the number of clearances unjustly denied would skyrocket. These injustices would occur not only within the military; they would reverberate throughout all federal agencies with access to the Fort Holabird data bank.

The Army's domestic-intelligence program also imperils numerous expectations of privacy, some of which enjoy the status of legal rights. It does so by exposing Americans to governmental scrutiny, and the fear of scrutiny, to an extent to which they have never been exposed before. Even the Budget Bureau's ill-starred proposal to consolidate the federal government's statistical records into a National Data Center would not have brought together so much information about individual beliefs and actions.

The privacy of politically active citizens is especially threatened by the Army's practice of watching political protests, large and small, throughout the United States. To the potential protester, it is one thing to expect local press and police coverage; it is quite another to expect a military surveillance which specializes in keeping permanent records of lawful political activity.

What effect awareness of the CONUS intelligence program will have on the vast majority of people who are *not* politically active is more difficult to predict. By itself, news that the Army is watching civilian politics is not likely to cause most people to worry personally about their privacy. But it would be one more increment in a growing pattern of governmental intrusiveness that could have a significant cumulative impact.

Such a pattern is now well established. Among the more widely publicized activities in recent years have been the CIA's surreptitious financing of student groups, labor unions, and foundations (despite the territorial limits of that agency's mandate), the Post Office's use of peepholes in restroom walls, and the Defense Department's misuse of lie detectors. Others include countless illegal wiretaps by the FBI, the Internal Revenue Service, and the Department of the Interior. More recently, the publication of confidential FBI wiretap information by *Life* and *Newsweek* which linked Jets' quarterback Joe Namath to Mafia figures suggests that the FBI has now assumed responsibility for enforcing professional football's code of conduct.

The cumulative impact of such abuses of power and privacy eventually must convince even the most anonymous of individuals that the United States is moving towards a society in which no one has control over what others know about him. Public awareness of the Army's activities cannot but hasten this conviction.

The unregulated growth of CONUS intelligence machinery also threatens the country's political health. It does so both by inhibiting political participation and by enhancing the potential clout of demagogues and others who would misuse security files for partisan or personal purposes.

The most immediate risk posed, of course, is to political participation. Once citizens come to fear that government agencies will misuse information concerning their political activities, their withdrawal from politics can be expected. This withdrawal can occur in a variety of ways. Some people may decline to become involved in potentially controversial community organizations and projects. Others may go further and avoid all persons who support unpopular ideas or who criticize the govern-

ment. Some may refuse to object to the abuse of government authority, especially when the abuse is committed in the name of national security. Others may even stop reading political publications, out of fear that the government might learn of their reading habits and disapprove. Indeed, an adjudicator of security clearances once asked me if she could lose her clearance if she allowed her daughter to subscribe to *The National Observer!*

Inhibitions generated by awareness of extensive domestic surveillance are likely to be strongest at the local level. This is where most citizens participate in politics if they become involved at all. The withdrawal can be expected to occur all across the political spectrum, although the strongest objections to surveillance will undoubtedly come from the left. Those most likely to be deterred, however, are not the extremists of the right or the left, whose sense of commitment runs deep, but the moderates, who normally hold the balance of power. Depletion of their ranks would, of course, strengthen the influence of the extremists, polarize debate, increase animosities, and decrease tolerance. As political positions rigidify, compromise and flexibility would become harder to achieve. And the capacity of government to renew itself and promote responsible progress would also suffer.

A less immediate but no less serious danger lies in the potential for misuse inherent in the Army's extensive files on individuals and groups. It is frightening to imagine what could happen if a demagogue in the Martin Dies-Joseph McCarthy tradition were to gain access to the computer the Army seeks now, or if an Otto Otepka in uniform were to leak a copy of the Intelligence Command's so-called "blacklist" to friends in Congress, or if a General Edwin Walker were to take charge of the Intelligence Command.

Such speculation assumes, of course, that the Army cannot guarantee the inviolability of its files. The assumption, unfortunately, has some validity. Only last year, information from the Army's confidential service record on New Orleans District Attorney Jim Garrison was leaked to the press. Officers at the Investigative Records Repository at Fort Holabird (which functions as the Army's lending library for such files) suspected that the leak came from a civilian agency in Washington. They were helpless to do anything about it, however, because they had no system of records accountability by which they could fix responsibility. When asked why such a system did not exist, one officer told me: "We probably couldn't stop it [the leaks] if we tried."

Finally, the unregulated growth of domestic intelligence activity can have the paradoxical effect of undermining the very security it seeks to protect. It can do so in at least two ways. First, by increasing the "cost" of lawful political activity, it tends to force extremist groups to go underground, there to act out their us-versus-them view of politics by criminal means. Second, by intruding too closely into the lives of government employees (or prospective employees), it tends to inhibit them from applying for jobs requiring security clearances or from exercising initiative and imagination in those jobs. A good intelligence officer must be able to analyze and report accurately, and to do so he must feel free to immerse himself in the ideas and culture of the people he studies. A good scientist must have freedom to pursue his curiosities, or he is not likely to work for the government, which rarely pays as much as private industry. The direct consequence of programs which deny this freedom is to impair the quality of secret work and the caliber of the men who do it. As John Stuart Mill warned over a century ago:

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> A state which dwarfs its men, in order that they may be more docile instruments in its hands, even for beneficial purposes, will find that with small men no great thing can really be accomplished....

What Can Be Done?

If the Army has exceeded the limits of its needs and authority to establish a domestic intelligence program which endangers numerous public interests, what steps should be taken to curb its excesses?

An obvious first step is a court challenge of the Army's authority to possess information for which it has no substantial need. The main target of such a lawsuit should be the personality files and blacklists describing the *lawful* political activities of individuals and groups. A second target should be the collection and storage of information on individuals and groups suspected of participating in *unlawful* political activity—except where that information is essential to an "early warning" system, or where the persons involved are associated with the armed forces, or where the information is collected in the course of security investigations.

The lawsuit's argument should be twofold: (1) the Army has no substantial need for either kind of information, and (2) the very existence of the program inhibits the exercise of First Amendment rights. Such a suit should seek a court order declaring the Army's possession of both kinds of information to be unconstitutional; it should also ask the court to enjoin future collection and storage of such information and to direct the destruction of all existing personality files and blacklists.

While such a lawsuit stands a good chance of success, it could take years to litigate. Moreover, a favorable decision could be ignored or evaded for many more years. Thus, while the symbolic value of such a decision would more than justify the time and expense, an effective challenge of the intelligence program will require the development of legislative and administrative remedies as well.

Whoever attempts to devise these remedies should be prepared to undertake subtle analyses of competing interests and values, for while the excesses of the program must be permanently curbed, the Army's ability to fulfill its responsibilities must not be impaired.

Ideally, legislative and executive analyses should be based on the kinds of questions I have already asked: What are the Army's real domestic intelligence needs? What authority does it have to initiate specific activities to meet those needs? What threats to liberty does each domestic intelligence effort pose?

The analysis should begin by demanding a justification for each alleged intelligence need in terms of the Army's authority to meet such a need and its purpose in trying to do so. Each need should then be weighed against the threats it may pose to the rights of individuals, to the vitality of the political process, and to the security of the nation. Where the risk is clear and the need doubtful, the Army should be denied authority to satisfy the need. Where the threat and the Army's need are both evident, less hazardous alternatives ought to be considered. In this circumstance, the capacity of politically responsible officials to control the alternatives should be weighed. Where reliable controls cannot be devised, the intelligence effort should not be authorized—even though the denial of authority may deprive the government of useful knowledge about the domestic political scene. If the imposition of these restraints poses a risk to internal security, then we must accept that risk as the price for individual liberties and a truly democratic political system.

The Congressional power of inquiry should be exercised first. Few Americans—including most members of Congress—know anything about the activities and plans of the *domestic* intelligence community. Many do not even realize that the growth of formal and informal ties among law-enforcement, intelligence, and security agencies has made it necessary to think in such terms.

For maximum effectiveness, Congress should hold open hearings not only to inform itself and the public, but to remind the intelligence community in general, and the Army in particular, that their authority to spy on civilian politics must be construed strictly, in accordance with such established principles as civilian control of the military, Presidential control of the bureaucracies, state and civilian primacy in law enforcement, compartmentalization and decentralization of intelligence duties, and obedience to law. Where it is not, corrective legislation should be promised.

A special effort should be made in the course of these hearings to inform the domestic intelligence community that Congress does not accept the Justice Department's position that "Congress cannot tell the President what means he may employ to obtain the information he needs."

Congress should also exercise its appropriations power so as to encourage major reforms in the Army's program. Specifically, it should block all funds for the planned computer unless and until the Army agrees to:

(1) Instruct its agents to limit their collection of CONUS intelligence to reports of incidents, except where the reports describe violations of the Uniform Code of Military Justice or of Army regulations. This would dry up the source of most blacklists and personality files.

(2) Forbid the Intelligence Command to convert incident reports into personality reports, except where they relate to criminal or deviant activity by persons subject to military law or employed by the military. Thus storage of information about named civilians unassociated with the armed forces would be doubly foreclosed, should such information be reported by mistake or as an essential element of an incident report.

(3) Establish effective technological, legal, and administrative safeguards against the abuse of individual rights in the process of collecting, reporting, storing, and disseminating domestic intelligence or personnel security information. For example, the Army should forbid its agents to infiltrate civilian political groups. (If it fails to do so, Congress should make such infiltration a federal crime, just as it is now a crime for a local military commander to order his troops to serve in a sheriff's posse.) Computer storage systems also should be encouraged, since they can be equipped with more effective safeguards against misuse than is possible in document storage systems. However, these safeguards must be carefully designed, regularly tested, and reinforced by laws and regulations to deter those who might seek to circumvent them.

(4) Establish separate headquarters, preferably in separate cities, for the CONUS-intelligence and personnel-security staffs. So long as the two programs are located at the same headquarters (they now share the same room and some of the same personnel), the danger of informal leakage of CONUS intelligence material to the adjudicators will remain high. Establishment of physically separate headquarters would be expensive, since it would probably require two separate communications and information storage systems. Separate storage systems, however, could be more safely computerized. Thus some of the additional expense might be re-

coupled through increased efficiency.

(5) Request that the United States Judicial Conference or some similar body nominate a civilian advisory board to review and report annually on the sufficiency of the Intelligence Command's procedures for safeguarding individual rights. Such a board could satisfy both the public's need for a regularized system of independent scrutiny and the Army's need for friendly critics capable of alerting it to the legal, moral, and political implications of its domestic intelligence program. How successful such a board can be is open to question; much depends upon how skillfully its members can be chosen so as to assure both military and public confidence in their capacity for balanced and constructive judgments.

(6) Improve the professional quality of Intelligence Command personnel and security-clearance adjudicators. In the final analysis, the Army must be the front-line defender against the dangerous consequences of its own actions. Thus, among other things, the Army should be encouraged to end the overcrowding and understaffing of its Intelligence School, to revise and expand the curriculum of its agents' course, and to transfer the training of security-clearance adjudicators to an accredited law school or the Practising Law Institute, a non-profit organization well known for its practical courses for lawyers and laymen on specialized legal subjects.

Needless to say, each of these reforms should be initiated by the President or the Army without waiting for Congressional encouragement. In addition, the President should appoint a panel of distinguished citizens, on the order of the Kerner Commission, to look into the conduct of all domestic intelligence activities. He should also ask an organization like the highly prestigious American Law Institute to draft a new executive order and code of regulations to govern the granting of security clearances.

Implementation of these reforms can do much to bring the Army's domestic intelligence practices in line with its legitimate responsibilities. But it is not enough to reform the Army. The Intelligence Command is only one member of a huge, informal community of domestic intelligence agencies. Other members of the community include not only the FBI, the Secret Service, the Air Force, and the Navy, but hundreds of state and municipal police departments. Some of the latter are surprisingly large. The New York City Police Department's Bureau of Special Services, for example, employs over 120 agents and has an annual budget in excess of $1 million.

Each of these organizations now shares with the Army the capacity to inhibit people in the exercise of their rights, even without trying. By collaborating, they could become a potent political force in their own right. Thus as the Army, the FBI, and the Justice Department strive to coordinate these agencies through the establishment of wire services, hot lines, and computerized data banks, it is essential that the American public and its representatives be equally energetic in the imposition of checks and balances. In particular, special efforts should be made to prevent needless concentrations of information. The United States may be able to survive the centralization of intelligence files without becoming totalitarian, but it most certainly cannot become totalitarian without centralized intelligence files. The checks must be designed with the most unscrupulous of administrators in mind. The fact that we may trust the current heads of our investigative agencies is no guarantee that these agencies will not one day come under the control of men for whom the investigatory power is a weapon to be wielded against political and personal foes. ■

[From the New York Times, Apr. 4, 1976]

F.B.I.'s Tardiness is Facing Inquiry

JUSTICE DEPARTMENT LAWYERS HEARD ABOUT BURGLARY FILES JUST BEFORE DISCLOSURE

(By John Crewdson)

WASHINGTON, April 3.—Justice Department lawyers, stung by the belated discovery that agents of the Federal Bureau of Investigation had committed 92 burglaries at the Socialist Workers Party's offices, will take steps to find out why the bureau failed to produce the information sooner, a well-placed department source said.

Bureau documents describing the burglaries, which took place in New York City from 1960 to 1966, were provided to the party by the Justice Department under the discovery provisions of a civil lawsuit brought against the Government by the Socialist Workers. The party made the records public.

Department sources said later that lawyers defending the Government in that case had not been informed of the existence of the documents until the day before they were provided to the party's attorneys.

Moreover, the sources said, other Justice Department lawyers who were conducting a general investigation of burglaries by the bureau were not aware that the documents had been found until they saw news accounts of their discovery earlier this week.

The sources said that the bureau had made known to Justice Department the recollections of some of its long-time agents that the Socialist Workers had been the targetof an undisclosed number of break-ins.

But the lawyers had no idea of the timing or the scope of the burglaries, which came on an average of once every three weeks and produced some 10,000 photographs of the party's files, until the documents containing accounts of those operations were discovered in the bureau's New York City field office.

The department's civil rights division, which had been investigating all known F.B.I. burglaries from 1966 to 1968, is now considering expanding its inquiry to include the Socialist Workers burglaries, an official there said.

One source in the Civil Rights division said that its lawyers were also "very concerned" at not having been given the reports of those burglaries earlier. The source added that the lawyers would attempt "to find out why one branch of the Justice Department doesn't know what another branch is doing."

Based on the information gathered up to now, the source said, "no thought being given to possible prosecutions" of agents involved in the burglaries.

The bureau itself has had no comment on the belated discovery of the documents because, a spokesman said, "the matter is currently in litigation."

One source in the bureau said recently, however, that the documents were thought to have been destroyed years ago, and as soon as their existence was discovered they were forwarded to the Justice Department. No details of how or when they were found could be learned.

The discovery of the papers poses a separate problem for Government lawyers involved in the Socialist Workers civil lawsuit. They assured the party two years ago that it had not been the object of any break-ins by F.B.I. agents.

In its civil complaint, the party asserted that it had reason to believe that it had over the years been the target of warrantless electronic surveillance, mail openings and burglaries perpetrated by the F.B.I., the Central Intelligence Agency and other Federal agencies.

In response, the Justice Department acknowledged that there had been some electronic surveillance and that the bureau had attempted to disrupt the party's operations, but it denied that mail openings or burglaries had occurred. One Justice Department source said that the response had been based entirely upon information provided by the bureau, which had been asked to provide all relevant information from its files.

But even after the bureau told the Senate Intelligence Committee in September of some agents' recollections that the party probably had been burglarized, the Justice Department made no move to amend its answers.

One government lawyer familiar with the civil case said that while criticism of the bureau was "justified" because of its delay in locating the burglary reports, he had so far seen "nothing to indicate bad faith."

Another chagrined Justice Department official remarked, however, that it was "embarrassing when you have to keep going before a judge and saying, 'Sorry, sir, we just found this.' "

A spokesman for the Socialist Workers said that the party's lawyers would ask Federal District Judge Thomas P. Griesa next week to find the F.B.I. director, Clarence M. Kelley, in contempt because of the bureau's tardiness in producing the burglary reports.

[From the New York Times, Apr. 4, 1976]

F.B.I. Files Reply to Damage Suit

IT DEFENDS ITS SURVEILLANCE OF SOCIALIST WORKERS PARTY

(By Peter Kiess)

The Federal Bureau of Investigation, responding to a damage suit by the Socialist Workers Party, says it investigated members of the Trotskyite party partly because it feared they might "gain responsible positions not only in government but also in industry and education."

Syd Stapleton, secretary of the Political Rights Defense Fund, which is helping finance the party suit in Federal Court in Manhattan, said Tuesday that this "claims the right to drive people out of their jobs" if the bureau on its own thinks them "subversive."

The F.B.I. response was actually a 350-word summary of "determinants" of F.B.I. investigations, originally prepared by the Comptroller General's General Accounting Office for the House Judiciary Committee last month. It was adopted and submitted more than a week ago as the F.B.I. answer to an interrogatory by the party's lawyers.

The document asserted that individuals in "subversive groups" were "presumed to recognize that the use of violence as a political tool is inevitable" and that "all members are investigated sufficiently to assess their willingness to use violence for their cause."

PARTY STRESSES LEGALITY

The Socialist Workers Party stresses that it is a legal political party, which runs candidates, currently including races for President and Congress. The defense fund says the party "neither advocates nor engages in illegal or violent activities" and has nothing in party files "that could be construed as relating to 'national security.' "

In its response on reasons for files on actual and suspected party members, the F.B.I. said that "leaders and activists" in subversive groups "may be subject to continuous investigation."

The bureau said it sought to "identify all members of subversive groups" to develop a complete picture of their organizations' activities and to assess their ability to achieve goals. It said it aimed to "identify attempts to infiltrate nonsubversive groups," help provide information for protecting Government officials and "assess potential informants."

Another aim is "to conduct an effective security of government employees program," the document said, "According to internal F.B.I. communications the F.B.I. is concerned that members of subversive groups will, at some future time, gain responsible positions not only in government but also in industry and education."

Mr. Stapleton contended that "this statement proves that the F.B.I.'s attempted disruption of socialists and others—once known as Cointelpro—has never come to a halt." He asserted that a "subversive" was "anyone or anything that the F.B.I. says it is."

He charged that the policy statement would violate guidelines by Attorney General Edward H. Levi limiting F.B.I. domestic security investigations to potential crimes or violence. The guidelines, he said, would not authorize F.B.I. "punishment" for party membership.

NEW GUIDELINES SET

In Washington, the Justice Department said the new guidelines would go into effect next Monday. One section eliminated was authorization for "preventive action," which was in a first draft last December and which would have specifically permitted disruption of groups or individuals plotting violence.

Last Monday, Evelyn Sell, a 46-year-old teacher, filed a $200,000 suit against the Austin, Tex., school board over her 1970 dismissal. She said she learned from F.B.I. documents released last June that six memorandums on her party activities had been sent to the Austin police to relay to school officials.

Another party member, Dr. Morris Starsky, has been suing for reinstatement as an assistant professor of philosophy at Arizona State University, charging that F.B.I. documents show a two-year campaign instituted against him before his 1970 dismissal. The Political Rights Defense Fund said he had won cases seeking back pay from two later teaching jobs in California.

Marcia Gallo and Catarino Garza, party candidates for Senator and Representative here, presented demands yesterday to Frank McArdle, Assistant to Mayor Beame for investigation of "apparent involvement of the New York Police Department in complicity" with 92 admitted F.B.I. burglaries of party offices here.

They also demanded prosecution of F.B.I. agents involved. However, the burglaries took place from 1960 to 1966, and according to police officials, a statute of limitation against prosecution for burglaries runs out five years after commission of the crime.

The demands for opening police files were supported by statements from the New York City chapter of the National Lawyers Guild and the Association of Legal Aid Attorneys.

[From the New York Times, May 20, 1976]

C.I.A Index on Mail Opening Incomplete

(By Robert M. Smith)

WASHINGTON, May 19—The Department of Justice has asked a Federal judge in San Francisco to set aside an order in its favor because it has learned that Central Intelligence Agency affidavits used by the Government in the case were wrong.

More important than the particular case are the possible ramifications of the Government's admission that the C.I.A.'s statements to the court were wrong.

Basically, affidavits of William E. Colby, former Director of Central Intelligence, and his aides stated that there was a microfilm index with the names of all those whose letters to or from the Soviet Union were opened or whose envelopes were photographed. The Government now says that all of the materials "not obtained under the Soviet mail intercept program were included in the microfilm program or index."

MAY HAVE BEEN MISINFORMED

This may mean that those who have asked the agency under the Freedom of Information Act whether their mail was intercepted, and were told that it had not been, were misinformed. A C.I.A. spokesman refused to provide any information beyond the documents filed in court by the Government.

It is not clear what caused the C.I.A. to realize its error at this point, after the close of the San Francisco case.

Representative Bella S. Abzug, Democrat of Manhattan, whose mail had been opened by the agency, has been pressing the C.I.A. about discrepancies in its figures involving the mail interception program and its index.

In a news release today, Mrs. Abzug contended that what the C.I.A. called a "mistake" in record-keeping had led the agency not to check "over a million letters passing through the New York post office between 1958 and 1973 which were photographed and kept on microfilm" when it answered inquiries from people who asked for any files the C.I.A. had on them.

More than 5,000 persons have written the agency asking for records on themselves.

Mrs. Abzug said that the C.I.A. had been careful in responding to inquiries to give narrow answers stating that a search of its files disclosed no information identifiable to that person.

"Since the photographed envelopes were not indexed," she continued, "the C.I.A. simply informed people that a check of their indexes showed no information."

Mrs. Abzug, who heads the House Government Operations Committee's Subcommittee on Government Information and Individual Rights, contended that

"the only fair and sensible thing is for the C.I.A. to personally notify the individuals and organizations it has found records on."

The San Francisco suit was brought by Stephanie Kipperman, who was told by the C.I.A. that it had not intercepted any of her mail because her name did not appear on its index.

Not satisfied, Mrs. Kipperman brought suit, contending in effect that some of her correspondence to and from the Soviet Union must have been inspected because of the scope of the agency's interception program.

Federal District Judge Charles B. Renfrew refused her attorney's request to look at the index and granted the Government summary judgment on April 28, saying he believed that the C.I.A. "has responded in good faith and with total honesty."

In the brief it filed yesterday, the Department of Justice noted that Judge Renfrew had relied heavily on the facts set out in the affidavits of Mr. Colby and his aides. It asked that the judge vacate his judgment "until the extent to which intercepted correspondence was not incorporated into the index can be ascertained and a report made to the court."

The brief concluded by saying that the department had been told by the C.I.A. that an investigation was under way.

In his original opinion, Judge Renfrew said that he had no reason to doubt the accuracy of the C.I.A.'s affidavits.

"To be sure," the judge added, "we live in a time when many—plaintiff apparently among them—have come to react skeptically to the assurances of senior Government officials that full disclosure has been made of all facts relevant to a particular area of inquiry."

"Plaintiff's reluctance to accord total credence to the affidavits submitted by the defendants are thus understandable," the judge continued, "especially in light of the fact that we are concerned here with an agency which, from necessity, frequently operates with something less than total openness."

Renfrew added, "the court believes that in this particular case, the Central Intelligence Agency has responded in good faith and with total honesty to plaintiff's inquiries."

The judge has set May 27 for a hearing on the Government's motion.

APPENDIX 9.—OTHER MATERIALS RELATING TO NOTIFICATION AND PROGRAMS COVERED BY BILLS

HEARINGS ON H.R. 12039, NOTIFICATION BILL

HON. BELLA S. ABZUG OF NEW YORK, IN THE HOUSE OF REPRESENTATIVES, THURSDAY, APRIL 29, 1976

Ms. ABZUG. Mr. Speaker, the Government Information and Individual Rights Subcommittee, which I chair, is holding hearings on H.R. 12039, H.R. 169, and H.R. 13192. These bills would amend the Privacy Act of 1974 to require that the subjects of such illegal activities as the FBI's COINTELPRO, the CIA's CHAOS program, CIA and FBI mail openings and burglaries, and the IRS special service staff, be notified that they were subjects, informed of their rights under the Privacy Act and the Freedom of Information Act, and afforded the option of having the improperly compiled files destroyed.

Our first hearing on this legislation was held on April 28, with CIA Director George Bush and representatives of the Justice Department appearing as witnesses. The second hearing will take place on Tuesday, May 11, at a time and place to be announced. At that time, we expect to hear from IRS Commissioner Donald Alexander and witnesses from the Department of Defense.

My opening statement at the April 28 hearing follows:

STATEMENT OF REPRESENTATIVE BELLA S. ABZUG

The Subcommittee today begins consideration of an extremely timely and important subject—the rights of individuals who were subjected to surveillance and harassment by programs such as the FBI's COINTELPRO and the CIA's CHAOS. We have before us H.R. 169 and H.R. 12039, which would require that all who were objects or subjects of such programs be provided with notice that the government maintains files on them and that they have a right to have such files destroyed.

Related to this matter, and another subject of these hearings, is the impending resumption by the intelligence agencies of their programs of destruction of documents. We are frankly concerned that before Congress can act on H.R. 169 and H.R. 12039—the bills before us which would require notification—the agencies may dispose of the evidence of past wrongdoing. Several agencies have indicated their strong desire to resume destruction of documents now that the Pike and Church Committees have reported. We have asked them to desist, at least until Congress can act on this or similar legislation to notify the victims of improper activities.

It is now common knowledge that the FBI and CIA, among other agencies, have in the past three decades engaged in many improper or illegal interferences with the rights of innocent individuals who were merely exercising the rights guaranteed to them by the Constitution. These invasions took several forms, from illegal mail openings and burglaries to elaborate programs of harassment and disruption such as the Special Service Section of Internal Revenue and the FBI's COINTELPRO, to the monitoring of international cable traffic, to extensive programs of data collection and dissemination such as the CIA's CHAOS program.

The bills to be considered today would require that *every* person and organization who is named in an index or the subject of a file concerning any of these programs and certain other activities such as illegal wiretaps, mail opening or break-ins—that *every* such person or organization be informed that there is a file or reference to him or her, that he or she has certain rights under the Freedom of Information Act and the Privacy Act, and that he or she has a right to have expunged such files or references which violate the Privacy Act. I stress "every" because it appears to me that the program of notification to the victims of COINTELPRO recently announced by Attorney General Levi is far too narrow in scope and purpose. I hope the Justice Department witnesses here today will address themselves to this concern and to the other concerns which have been expressed regarding their very limited notice program.

Before discussing the nature and extent of the programs and activities which fall under H.R. 169 and H.R. 12039, I want to make clear that we do not view these bills as finished legislation. The purposes of hearings such as this one is to ascertain whether legislation should be amended. It may be necessary, for example, to expand the programs and activities covered by the bills to include forms of harassment and interference with individual rights not covered by arbitrary program designations such as "COINTELPRO" or "CHAOS." For example, the CIA's CHAOS program, which we will discuss shortly with CIA Director Bush, did not include all CIA programs directed against domestic organizations and individuals. In addition to CHAOS, the CIA conducted a program monitoring dissent on U.S. campuses, and infiltrated organizations in the Washington, D.C. area such as the Women's Strike for Peace, the Washington Peace Center, CORE, the American Humanist Society and the Washington Ethical Society. I see no reason why the objects of these programs or incidents of surveiliance should not be given notice as well as the victims of CHAOS. In the FBI area, the notorious FBI program of harassment of the Reverend Martin Luther King, Jr. was not considered to be part of COINTELPRO. Also, FBI programs directed against such targets as certain American Indian groups, certain peace groups and organizations such as the Institute for Policy Studies were not technically COINTELPRO, yet the victims of these activities deserve to be given notice of improper investigations and harassment. In addition, certain forms of intensive investigation, pretext contracts, the use of the grand jury to harass and other forms of surveillance may be proper subjects of the bills before us.

Our concern here, by the way, is not to interfere with any legitimate law enforcement or foreign intelligence activity of the agencies, but solely to require that the domestic subjects of unlawful programs and activities be notified and be informed of their rights under the law.

Before hearing from our witnesses I want to set forth a brief outline of the activities and programs covered by the bills before us. They would require notice to all who were subjected to the following activities:

Mail openings. For over twenty years, the CIA engaged in a massive program of clearly illegal mail openings. Literally millions of envelopes were photographed or copied and the contents of 215,820 letters were read and distributed to units within CIA and to other agencies such as the FBI. Although various CIA and FBI watch lists were utilized, mail openings were not confined to those on the lists. Many innocent people, myself included, were subjected to this invasion of privacy when they had neither committed nor were suspected of committing any crime. We would require that all those whose mail was opened be given notice of that fact and an opportunity to obtain their files.

Burglaries. As far as I can determine, the Congress has never been fully apprised of the extent of illegal burglaries, or "black bag jobs", committed by the intelligence agencies against domestic targets. In fact, recent events make it clear that even the Department of Justice may not be aware of the extent of these activities. In a civil case involving 92 burglaries of the offices of the Socialist Workers Party in New York City, the FBI is said to have withheld disclosure of the number of, and responsibility for these burglaries from the Justice Department lawyers defending the case. At least, that is what the Justice Department lawyers claim. While we may not know the exact number of these illegal entries, we do know that both CIA and FBI has engaged in illegal burglaries in violation of the Fourth Amendment.

Warrantless Surveillance. The Supreme Court has held that warrantless surveillance is unconstitutional where the object of the surveillance is not a foreign power or its agent. We now know that the FBI has conducted a large number of wiretaps where the object of the tap was not a foreign power or its agents. In fact, the objects of the famous "Kissinger taps" were restricted to newsmen and former employees of the National Security Council. Again, we would require that all those who were subjected to nonconsensual, warrantless wiretaps be given notice.

Monitoring of International Communications. This Subcommittee has recently heard testimony about how the domestic cable companies have been cooperating with the FBI and the National Security Agency for almost 30 years in monitoring all cable traffic between this country and abroad. Again, a large net was used to gather everything, whether involving a proper object of scrutiny or your grandmother's letter containing family gossip.

The bills before us also cover three major programs—CIA's CHAOS, FBI's COINTELPRO and the Special Service Section of Internal Revenue.

CHAOS. This CIA program, which began as a survey of the extent of any foreign connections with domestic dissident events, evolved into a massive col-

lection of data on American citizens and organizations. The Rockefeller Report found that "The names of all persons mentioned in intelligence source reports received by Operation CHAOS were computer-indexed. . . . Eventually, approximately 300,000 names of American citizens and organizations were thus stored in the CHAOS computer system." CHAOS also maintained files on nearly 1,000 organizations, including such "dangerous" elements as the "Women's Liberation Movement," "Clergy and Laymen Concerned About Vietnam," the "National Mobilization Committee to End the War in Vietnam" and the "Women's Strike for Peace." The Rockefeller Report suggests that these files be destroyed. I agree, but not before the subjects of the file are made aware of the way their government spied on them.

COINTELPRO. From 1956 to 1971, when it is claimed the program terminated, the FBI engaged in a "Counterintelligence Program" targeted against at least five domestic groups. These targets named by the FBI as "white hate groups" and "black hate groups" and the new left, among others, were not necessarily "hate" groups. An organization such as the Southern Christian Leadership Conference (one of the "black hate groups") should not be included under the rubric given it by the FBI, and there are other examples of the FBI designating a domestic dissident organization as a "hate" group and target of disruption when it was nothing more than a dissident organization. The purpose of the programs against these groups were harassment, interference and intimidation. The tactics used included dissemination of anonymous and false information, establishing sham organizations for disruptive purposes, interfering with political and economic relationships, and a variety of shocking activities against innocent Americans.

The Attorney General recently announced a very limited program of notifying victims of COINTELPRO, and we will want to discuss that program with the Justice Department witnesses here today. My initial impression is that the Justice Department program does not nearly go far enough. I am informed that only a few hundred of the thousands of people and organizations who were harassed by the FBI will be given notice and then the notice to be given hardly suffices to give the victim sufficient information about his or her rights under law.

The Special Service Section of Internal Revenue. This unit focused on "ideological, militant, subversive, radical, and similar type organizations." By 1973, there was a total of 11,458 SSS files on individuals and organizations. These files were often opened at the instigation of the FBI, information from tax returns was supplied to the FBI, and the program was undoubtedly used for harassing tax audits. We will inquire into this subject in detail when IRS Commissioner Alexander appears before this Subcommittee on May 11.

The principal bill before us, H.R. 12039, would amend the Privacy Act of 1976 to require that the subjects of every one of the programs listed here and the persons against whom the tactics in question were employed would be notified and given the right to expunge their files.

The Privacy Act presently requires that no Federal agency may maintain files on individuals which are not accurate, relevant, timely and complete. Also, no agency may maintain records describing how any individual exercises First Amendment rights. These were the provisions of the Act recently utilized in the expungement of the content of the taps and surveillance conducted against the Columnist Joseph Kraft. But thousands of other Americans are the subjects of improperly gathered materials about which they are unaware. The bills under consideration here would provide that notice and would make clear that the individual has the right to have improper records expunged.

It should be noted that the Rockefeller Commission recommended that certain improperly gathered files, such as the CHAOS files, be destroyed, and other agencies are anxious to destroy records which should not have been collected in the first place. It might therefore be asked: What is the purpose of these bills?

Why not just let us get rid of these files and be done with the past? The answer is that we are condemned to repeat the past unless we can learn from it. It is necessary, though perhaps uncomfortable, for us to learn the full extent of the wrongs done to innocent people in the name of government if our democracy is to survive and flourish. If we are not to repeat the horrors of the past three decades we must study and learn how and why we did what we did. It is for this reason that I insist that we not bury the wrongs with the wrongdoers, but that we all understand what happened so as not to repeat it in the future.

This hearing and subsequent hearings will attempt to ascertain the extent and nature of the files maintained by the various intelligence agencies on the subjects of our bills. We will attempt to trace the dissemination throughout the government of certain of these records. It is important to remember that during this

period, the traditional lines of jurisdiction between agencies regarding surveillance records became almost meaningless. The files are interwoven; they fed upon each other. Exchanges, watch lists, and wide-spread dissemination make it extremely difficult to purge the files without meticulous tracing. What purpose is served, for example, to destroy the CIA's CHAOS files, if they are replicated in FBI files and in other CIA records?

The bill also eliminates the specific exemption the Privacy Act presently gives the Secret Service and the CIA. When the Privacy Act was passed, I opposed these exemptions on the ground that there were sufficient exemption categories for specific types of records and that no case has been made to exempt an agency such as the CIA from every access provision of the law. There is no such blanket exemption for a particular agency under the Freedom of Information Act and I see no need for one under the Privacy Act.

[From the Congressional Record, Feb. 24, 1976]

THE PEOPLE'S "NEED TO KNOW"

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from New York (Ms. ABZUG) is recognized for 10 minutes.

Ms. ABZUG. Mr. Speaker, I am today introducing a bill to amend the Privacy Act of 1974 to require that Federal agencies maintaining files on individuals or organizations who were subjected to illegal surveillance be informed of that fact and of the fact that they have certain rights under the Privacy Act and the Freedom of Information Act. The bill also gives the subject the right to require that every copy of the file be destroyed.

In all of the furor in the past few weeks over "leaks" of classified information, we are losing sight of the fact that we have done virtually nothing to remedy the wrongs done to innocent victims by the intelligence agencies in the name of national security. The first step in affording a measure of justice to the people and organizations which were subjected to snooping and harassment is simply to advise them that the Government still maintains files about their perfectly legal activities. The next step is to allow them the option of having every trace of such files destroyed.

No one should have to guess whether he or she was the object of illegal, unconstitutional, or improper activity by the intelligence agencies. Many people may not even be aware of the fact that the Government opened their mail or tapped their phone or otherwise had them under surveillance for doing nothing more than exercising their constitutional rights. These people have the right to be informed, to obtain their files under the Freedom of Information Act, and, if necessary, to seek legal remedies. It is for these reasons that I offer this bill which I believe answers the people's need to know. The requirement of notice and the right to destroy one's file would apply to the following programs or operations:

First. Central Intelligence Agency and Federal Bureau of Investigation mail openings: As a result of the work of various House and Senate committees, the public has become aware of the shocking program of mail openings carried on by the CIA and the FBI for 20 years with the conscious knowledge that they were acting illegally. According to testimony before the Senate Select Committee on Intelligence, the New York program alone involved the opening of over 200,000 individual letters. Although "watch lists" were supplied by the CHAOS program and by the FBI, mail openings were not confined to those on the lists. Many innocent people, including Members of Congress, were subjected to this indecent invasion of privacy under the guise of national security when they had neither committed nor were they suspected of committing any crime. Every person or organization subjected to a mail opening should be informed that there is a file or an index resulting from that event, and should be given the right to have every trace of this invasion of privacy removed from the public record.

Second. National Security Agency monitoring of international communications: According to the Rockefeller Commission report, part of the CHAOS program conducted by CIA included the monitoring of international communications of individuals and organizations. In hearings held by the House Subcommittee on Government Information and Individual Rights which I am privileged to chair, information was developed that commercial cable companies had been cooperating with the FBI and the National Security Agency for over 30 years in monitor-

ing cable and telex traffic. Subsequently, the Senate Select Committee on Intelligence released a report on Operation Shamrock, the cover name given to this message-collection program, indicating that international cables were routinely turned over to NSA. The Shamrock report states that "telegrams to or from, or even monitoring, U.S. citizens whose names appeared on the watch list in the late 1960's and early 1970's would have been sent to NSA analysts, and many would subsequently be disseminated to other agencies." Mr. Speaker, these people have a right to know that the Government read their private communications without court order, and my bill will require that they be so informed.

Third. Burglaries: Both the FBI and CIA have stated publicly that they engaged in illegal burglaries and it is clear that many of these were directed against domestic dissident organizations. The FBI conducted some 238 entries in connection with the investigation of 12 "domestic security targets" in just one program. The Rockefeller Commission report states that the CIA conducted at least 12 unauthorized entries. Surely, the victim of a burglary ought to be informed that it was the Government itself which engaged in this incredible behavior.

Fourth. Warrantless wiretaps: By now it is well known that the FBI conducted a large number of electronic surveillances where the object of the tap was not a foreign power or its agents. In fact, the objects of the "Kissinger taps" appear to be restricted to newsmen and former employees of the NSC. Mr. Speaker, as a spinoff of Watergate and its penumbra, we have learned of a substantial number of these taps, but how many more were there about which we know nothing? My bill would require that every sender and receiver of an intercepted communication conducted without warrant must be informed that there exists a file on him or her as a result of the surveillance. Perhaps more important, it would give the subject of the file the right to have the contents destroyed. Why, for example, should the Government continue to maintain the logs of private conversations conducted over a period of almost 2 years on the home telephone of someone like Morton Haperin? It is clear that it should not perpetuate such a grievous invasion of personal privacy by continuing to maintain the fruits of wrongful surveillances.

Fifth. Operation CHAOS: This CIA program, which began as a survey of the extent of any foreign connections with domestic dissident events, evolved into a massive collection of data on American citizens and organizations. The Rockefeller report concluded:

The Operation became a repository for large quantities of information on the domestic activities of American citizens. . . . Much of the information was not directly related to the question of the existence of foreign connections with domestic dissidence.

Mr. Speaker, the Rockefeller report concludes that the files of the CHAOS project which have no foreign intelligence value should be destroyed at the conclusion of the current congressional investigations. I agree, but not before the subjects of the files are made aware that they exist.

Sixth. COINTELPRO: From 1956 to 1971, the FBI engaged in a "Counterintelligence program" targeted against five domestic groups, including "the new left, white hate groups, and black extremist organizations." The recent revelations about the harassment and invasion of the Reverend Martin Luther King, Jr.'s, privacy was shocking to almost all Americans. Yet we do not know how many others were subjected to similar disruptive tactics which the FBI admits having engaged in. Some of these tactics include, dissemination of false or fictitious material about individuals or groups; use of informants to disrupt a group's activities; informing employers and credit bureaus of members' activities; establishing sham organizations for disruptive purposes; informing family or others of radical or immoral activity; and more. Once again, Mr. Speaker, there are people in America today who are not aware of the fact that the troubles which were visited upon them a few years ago was the work of the FBI. Is it not our duty to so inform them?

Seventh. Internal Revenue Service special service staff. In 1969, the IRS created this unit focused on "ideological, militant, subversive, radical, and similar type organizations." By 1973 there was a total of 11,458 SSS files on 8,585 individuals and 2,873 organizations. Many of the organizations and individuals targeted by IRS were antiwar and "new left" groups and their leaders and members. There are also a number of files on "liberal establishment" organizations such as church groups. Clearly, these files were collected so IRS could provide "special" tax treatment to these individuals and organizations. Would it not now be proper to inform people that the tax audit they had several years ago was a result of the file kept by the Special Service Staff of IRS?

Mr. Speaker, as I indicated previously, the Rockefeller Commission recommends that files of the CHAOS project be destroyed after the completion of the current Congressional investigations into intelligence agencies. Senator FRANK CHURCH, chairman of the Senate Select Committee on Intelligence, has obtained agreement from the intelligence agencies that nothing will be destroyed until his committee has reported and gone out of business. That day will soon be here and the shredders may be warming up right now to destroy and bury forever the record of one of the sorriest chapters in American history. Accordingly, I am today requesting that all intelligence agencies refrain from destroying any files or records until such time as Congress has acted on the bill I am today introducing.

Finally, the bill I am introducing would eliminate the virtual blanket exemption which the Privacy Act now gives to the CIA. It is my view that no agency should be exempt from the operation of the Privacy Act, but that the CIA should be required to show serious damage to national defense or foreign policy before it may withhold an individual's file.

The text of the bill follows:

H.R. 12039

A bill to amend the Privacy Act of 1974

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 552a of title 5, United States Code, is amended—

(1) by striking out subsection (d) (2) (B) (i) and inserting in lieu thereof the following;

"(i) correct, expunge, update, or supplement any portion thereof which the individual believes is not accurate, relevant, legally maintained, timely, or complete; or";

(2) by striking out "and" at the end of paragraph (10) of subsection (e), by striking out the period at the end of paragraph (11) of such subsection and inserting in lieu thereof "; and", and by inserting immediately thereafter the following new paragraph:

"(12) inform each person who was—

"(A) the sender or receiver of any written communication, or communication by wire, cable, radio, or other means which was intercepted, recorded, or otherwise examined, by such agency, or any officer or employee thereof, without a search warrant, or without the consent of both the sender and receiver; or the occupant, resident, or owner of any premises or vehicle which was the subject of any search, physical intrusion, or other trespass, by such agency, or any officer or employee thereof, without a search warrant, or without the consent of such person;

"(B) the subject of a file or named in an index created, maintained, or disseminated by such agency, or any officer or employee thereof, in connection with an operation or program known as "CHAOS", which operation or program is described in the Report, dated June, 1975, to the President by the Commission on CIA Activities Within the United States;

"(C) the subject of a file or named in an index created, maintained, or disseminated by such agency, or any officer or employee thereof, in connection with an operation or program known as "Counterintelligence Program" or "COINTELPRO", which operation or program is described in the Statement of Hon. William B. Saxbe, and the hearings of Subcommittee of the House Judiciary Committee on November 20, 1974;

"(D) the subject of a file or named in an index created, maintained, or disseminated by such agency, or any officer or employee thereof, in connection with an operation or program of the Internal Revenue Service known as "The Special Service Staff", which operation or program is described in the Joint Committee on Internal Revenue Taxation Committee Print entitled "Investigation of the Special Service Staff of the Internal Revenue Service" dated June 5, 1975; that he, she, or it is or was such a person, provide each such person with a clear and concise statement of such person's rights under this section and section 552 of this title, and provide each such person with the option of requiring that agency to destroy each copy of such file or index in its possession.".

(3) by striking out "(e) (6), (7), (9), (10), and (11)" in subsection (j) and inserting in lieu thereof "(e) (6), (7), (9), (10), (11); and (12)";

(4) by striking out paragraph (1) of such subsection; and

(5) by striking out paragraph (3) of subsection (k) and redesignating the following paragraphs accordingly.

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14 October 1976

William E. Colby
Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Colby:

At its meeting on September 25, 1976, the AHA-OAH-SAA Joint Committee on Historians and Archives gave careful consideration to the report that your agency and other governmental law enforcement and intelligence units were destroying records obtained illegally. We deplore the unilateral destruction of such records without consultation with the appropriate authorities.

The Joint Committee is composed of the executive directors and representatives of the American Historical Association, the Organization of American Historians and the Society of American Archivists.

Sincerely yours,

Philip P. Mason

Philip P. Mason
Director
Professor of History
Chairman, AHA-OAH-SAA
Joint Committee on
Historians and Archives

cc: Representative Bella S. Abzug

COPY

[Supplied by Central Intelligence Agency]

COMMENTS ON DATA APPEARING IN ROCKEFELLER COMMISSION REPORT

Rockefeller

Page No.	Subject	Commission Statement	Comment
112	Mail Intercept	The project...provided file data ...in a compartmented computerized machine record system containing almost 2,000,000 entries.	The Commission's figure was an estimate. The index contains 1,462,202 entries, including an indeterminate number of duplicates. The entries do not identify U.S. citizenship and citizenship cannot be determined from the information provided. We could presume that senders of mail originating in the U.S. were U.S. citizens but this cannot be proven.
120	IDIU Computer Listing	The evidence reviewed by the Commission indicates that the listing of 10,000-12,000 names held by the IDIU and the compilation of 7,200 personality files held by operation CHAOS...were developed independently of one another.	This listing was never integrated into CHAOS.

78-638 O - 77 - 23

Page No.	Subject	Commission Statement	Comment
130	CHAOS	...including files on 7,200 American citizens.	The exact number of files on American citizens is 7,238.
		The documents in these files and related materials included the names of more than 300,000 persons and organizations which were entered into a computerized index.	The computerized index contains an estimated 200,000 names. The larger figure reflects duplication of names, organizations, publications and document subjects. Except for the 7,238 persons whose U.S. citizenship is known, the citizenship of the remainder of the 200,000 names cannot be determined as these were only name entries.
		Utilizing this information, personnel of the Group prepared 3,500 memoranda for internal use; 3,000 memoranda for dissemination to the FBI: and 37 memoranda for distribution to high officials.	Only estimates of the number of memoranda were available when the Commission investigated CHAOS. Subsequent tallies have identified some 4,600 internal memoranda, and 5,112 memoranda disseminated to the FBI. (The other number, 37, is accurate. In addition, 1,459 cables were sent to the FBI.)

Page No.	Subject	Commission Statement	Comment
157	Office of Security files on dissenting individuals and organizations.	Although estimates varied somewhat, approximately 500 to 800 files were created.... The Chief of the special branch "guessed" that somewhere between 12,000 and 16,000 names were indexed to these files.	These figures represented a reasonable and educated guess. The Office of Security files have been under continual review. The figure 500 to 800 files is still considered to be reasonable, but the number of names indexed will be much higher. It is presumed that most of these individuals are U.S. citizens.
210	Domestic Overt Collection	In addition to a master index of approximately 150,000 names, division Headquarters presently maintains approximately 50,000 active files	The estimate of 50,000 active files was valid. The approximately 150,000 names cover those contacted atleast once. There are approximately 350,000 other names which were recommended to us but never contacted.
242-243	Central Files and Indices of Operations Directorate	Of these an estimated 115,000 names are of persons who are either known or believed to be U.S. citizens.	The estimate of 115,000 names of known or presumed U.S. citizens is sound.
		The Operations Directorate has a total of some 750,000 personality files. Of these the Agency estimates 57,000 files are of American citizens and an additional 15,000 are of persons who may be American citizens.	The estimates, 57,000 and 15,000 are valid.

Page No.	Subject	Commission Statement	Comment
246	Office of Security Files	The bulk of the files maintained by the Office of Security consist of approximately 900,000 security files...About 90% of the security files relate to individuals, a majority of whom are U.S. citizens.	The figure 900,000 is basically accurate. The estimate of U.S. citizens is sound.
248	Office of Security Indices	All pertinent subjects and references identified in Security files have been indexed.... 900,000 of these indices are "subject" indices... An additional 950,000 indices are "reference" indices recording names which appear in documents stored in one of the folders indexed to a subject.	These figures are basically accurate.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1971

LAIRD, SECRETARY OF DEFENSE, ET AL. *v.* TATUM ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 71-288. Argued March 27, 1972—Decided June 26, 1972

Prior to its being called upon in 1967 to assist local authorities in quelling civil disorders in Detroit, Michigan, the Department of the Army had developed only a general contingency plan in connection with its limited domestic mission under 10 U. S. C. § 331. In response to the Army's experience in the various civil disorders it was called upon to help control during 1967 and 1968, Army Intelligence established a data-gathering system, which respondents describe as involving the "surveillance of lawful civilian political activity." *Held:* Respondents' claim that their First Amendment rights are chilled, due to the mere existence of this data-gathering system, does not constitute a justiciable controversy on the basis of the record in this case, disclosing as it does no showing of objective harm or threat of specific future harm. Pp. 3–16.

144 U. S. App. D. C. 72, 444 F. 2d 947, reversed.

BURGER, C. J., delivered the opinion of the Court, in which WHITE, BLACKMUN, POWELL, and REHNQUIST, JJ., joined. DOUGLAS, J., filed a dissenting opinion in which MARSHALL, J., joined, *post*, p. 16. BRENNAN, J., filed a dissenting opinion in which STEWART and MARSHALL, JJ., joined, *post*, p. 38.

Solicitor General Griswold argued the cause for petitioners. With him on the briefs were *Assistant Attorney General Mardian* and *Robert L. Keuch.*

Frank Askin argued the cause for respondents. With him on the brief was *Melvin L. Wulf.*

Sam J. Ervin, Jr., argued the cause for the Unitarian Universalist Assn. et al. as *amici curiae* urging affirmance. With him on the brief was *Lawrence M. Baskir.*

Burke Marshall and *Arthur R. Miller* filed a brief for a Group of Former Army Intelligence Agents as *amici curiae* urging affirmance.

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

Respondents brought this class action in the District Court seeking declaratory and injunctive relief on their claim that their rights were being invaded by the Department of the Army's alleged "surveillance of lawful and peaceful civilian political activity." The petitioners in response described the activity as "gathering by lawful means . . . [and] maintaining and using in their intelligence activities . . . information relating to potential or actual civil disturbances [or] street demonstrations." In connection with respondents' motion for a preliminary injunction and petitioners' motion to dismiss the complaint, both parties filed a number of affidavits with the District Court and presented their oral arguments at a hearing on the two motions. On the basis of the pleadings,[1] the affidavits before the court, and the oral arguments advanced at the hearing, the

[1] The complaint filed in the District Court candidly asserted that its factual allegations were based on a magazine article: "The information contained in the foregoing paragraphs numbered five through thirteen [of the complaint] was published in the January 1970 issue of the magazine *The Washington Monthly* . . . ."

District Court granted petitioners' motion to dismiss, holding that there was no justiciable claim for relief.

On appeal, a divided Court of Appeals reversed and ordered the case remanded for further proceedings. We granted certiorari to consider whether, as the Court of Appeals held, respondents presented a justiciable controversy in complaining of a "chilling" effect on the exercise of their First Amendment rights where such effect is allegedly caused, not by any "specific action of the Army against them, [but] only [by] the existence and operation of the intelligence gathering and distributing system, which is confined to the Army and related civilian investigative agencies." 144 U. S. App. D. C. 72, 78, 444 F. 2d 947, 953. We reverse.

(1)

There is in the record a considerable amount of background information regarding the activities of which respondents complained; this information is set out primarily in the affidavits that were filed by the parties in connection with the District Court's consideration of respondents' motion for a preliminary injunction and petitioners' motion to dismiss. See Fed. Rule Civ. Proc. 12(b). A brief review of that information is helpful to an understanding of the issues.

The President is authorized by 10 U. S. C. § 331 [2] to make use of the armed forces to quell insurrection

[2] "Whenever there is an insurrection in any State against its government, the President may, upon the request of its legislature or of its governor if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces, as he considers necessary to suppress the insurrection."

The constitutionality of this statute is not at issue here; the specific authorization of such use of federal armed forces, in addition to state militia, appears to have been enacted pursuant to Art. IV, § 4, of the Constitution, which provides that "[t]he United

and other domestic violence if and when the conditions described in that section obtain within one of the States. Pursuant to those provisions, President Johnson ordered

States . . . shall protect each of [the individual States] . . . on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence."

In describing the requirement of 10 U. S. C. § 331 for the use of federal troops to quell domestic disorders, Attorney General Ramsey Clark made the following statements in a letter sent to all state governors on August 7, 1967:

"There are three basic prerequisites to the use of Federal troops in a state in the event of domestic violence:

"(1) That a situation of serious 'domestic violence' exists within the state. While this conclusion should be supported with a statement of factual details to the extent feasible under the circumstances, there is no prescribed wording.

"(2) That such violence cannot be brought under control by the law enforcement resources available to the governor, including local and State police forces and the National Guard. The judgment required here is that there is a definite need for the assistance of Federal troops, taking into account the remaining time needed to move them into action at the scene of violence.

"(3) That the legislature or the governor requests the President to employ the armed forces to bring the violence under control. The element of request by the governor of a State is essential if the legislature cannot be convened. It may be difficult in the context of urban rioting, such as we have seen this summer, to convene the legislature.

"These three elements should be expressed in a written communication to the President, which of course may be a telegram, to support his issuance of a proclamation under 10 U. S. C. § 334 and commitment of troops to action. In case of extreme emergency, receipt of a written request will not be a prerequisite to Presidential action. However, since it takes several hours to alert and move Federal troops, the few minutes needed to write and dispatch a telegram are not likely to cause any delay.

"Upon receiving the request from a governor, the President, under the terms of the statute and the historic practice, must exercise his own judgment as to whether Federal troops will be sent, and as to such questions as timing, size of the force, and federalization of the National Guard.

"Preliminary steps, such as alerting the troops, can be taken by

federal troops to assist local authorities at the time of the civil disorders in Detroit, Michigan, in the summer of 1967 and during the disturbances that followed the assassination of Dr. Martin Luther King. Prior to the Detroit disorders, the Army had a general contingency plan for providing such assistance to local authorities, but the 1967 experience led Army authorities to believe that more attention should be given to such preparatory planning. The data-gathering system here involved is said to have been established in connection with the development of more detailed and specific contingency planning designed to permit the Army, when called upon to assist local authorities, to be able to respond effectively with a minimum of force. As the Court of Appeals observed,

> "In performing this type function the Army is essentially a police force or the back-up of a local police force. To quell disturbances or to prevent further disturbances the Army needs the same tools and, most importantly, the same information to which local police forces have access. Since the Army is sent into territory almost invariably unfamiliar to most soldiers and their commanders, their need for information is likely to be greater than that of the hometown policeman.
>
> "No logical argument can be made for compelling the military to use *blind* force. When force is em-

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the Federal government upon oral communications and prior to the governor's determination that the violence cannot be brought under control without the aid of Federal forces. Even such preliminary steps, however, represent a most serious departure from our traditions of local responsibility for law enforcement. They should not be requested until there is a substantial likelihood that the Federal forces will be needed."

This analysis of Attorney General Clark suggests the importance of the need for information to guide the intelligent use of military forces and to avoid "overkill."

> ployed it should be intelligently directed, and this depends upon having reliable information—in time. As Chief Justice John Marshall said of Washington, 'A general must be governed by his intelligence and must regulate his measures by his information. It is his duty to obtain correct information . . . .' So we take it as undeniable that the military, *i. e.*, the Army, need a certain amount of information in order to perform their constitutional and statutory missions." 144 U. S. App. D. C., at 77–78, 444 F. 2d, at 952–953 (footnotes omitted).

The system put into operation as a result of the Army's 1967 experience consisted essentially of the collection of information about public activities that were thought to have at least some potential for civil disorder, the reporting of that information to Army Intelligence headquarters at Fort Holabird, Maryland, the dissemination of these reports from headquarters to major Army posts around the country, and the storage of the reported information in a computer data bank located at Fort Holabird. The information itself was collected by a variety of means, but it is significant that the principal sources of information were the news media and publications in general circulation. Some of the information came from Army Intelligence agents who attended meetings that were open to the public and who wrote field reports describing the meetings, giving such data as the name of the sponsoring organization, the identity of speakers, the approximate number of persons in attendance, and an indication of whether any disorder occurred. And still other information was provided to the Army by civilian law enforcement agencies.

The material filed by the Government in the District Court reveals that Army Intelligence has field offices in various parts of the country; these offices are staffed in the aggregate with approximately 1,000 agents, 94%

of whose time [3] is devoted to the organization's principal mission,[4] which is unrelated to the domestic surveillance system here involved.

By early 1970 Congress became concerned with the scope of the Army's domestic surveillance system; hearings on the matter were held before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary. Meanwhile, the Army, in the course of a review of the system, ordered a significant reduction in its scope. For example, information referred to in the complaint as the "blacklist" and the records in the computer data bank at Fort Holabird were found unnecessary and were destroyed, along with other related records. One copy of all the material relevant to the instant suit was retained, however, because of the pendency of this litigation. The review leading to the destruction of these records was said at the time the District Court ruled on petitioners' motion to dismiss to be a "continuing" one (App. 82), and the Army's policies at that time were represented as follows in a letter from the Under Secretary of the Army to Senator Sam J. Ervin, Chairman of the Senate Subcommittee on Constitutional Rights:

> "[R]eports concerning civil disturbances will be limited to matters of immediate concern to the Army—that is, reports concerning outbreaks of violence or incidents with a high potential for violence beyond the capability of state and local police and

[3] Translated in terms of personnel, this percentage figure suggests that the total intelligence operation concerned with potential civil disorders hardly merits description as "massive," as one of the dissents characterizes it.

[4] That principal mission was described in one of the documents filed with the District Court as the conducting of "investigations to determine whether uniformed members of the Army, civilian employees [of the Army] and contractors' employees should be granted access to classified information." App. 76–77.

> the National Guard to control. These reports will be collected by liaison with other Government agencies and reported by teletype to the Intelligence Command. They will not be placed in a computer . . . . These reports are destroyed 60 days after publication or 60 days after the end of the disturbance. This limited reporting system will ensure that the Army is prepared to respond to whatever directions the President may issue in civil disturbance situations and without 'watching' the lawful activities of civilians." (App. 80.)

In briefs for petitioners filed with this Court, the Solicitor General has called our attention to certain directives issued by the Army and the Department of Defense subsequent to the District Court's dismissal of the action; these directives indicate that the Army's review of the needs of its domestic intelligence activities has indeed been a continuing one and that those activities have since been significantly reduced.

(2)

The District Court held a combined hearing on respondents' motion for a preliminary injunction and petitioners' motion for dismissal and thereafter announced its holding that respondents had failed to state a claim upon which relief could be granted. It was the view of the District Court that respondents failed to allege any action on the part of the Army that was unlawful in itself and further failed to allege any injury or any realistic threats to their rights growing out of the Army's actions.[5]

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[5] In the course of the oral argument, the District Judge sought clarification from respondents' counsel as to the nature of the threats perceived by respondents; he asked what exactly it was in the Army's activities that tended to chill respondents and others in

In reversing, the Court of Appeals noted that respondents "have some difficulty in establishing visible injury":

> "[They] freely admit that they complain of no specific action of the Army against them . . . . There is no evidence of illegal or unlawful surveillance activities. We are not cited to any clandestine intrusion by a military agent. So far as is yet shown, the information gathered is nothing more than a good newspaper reporter would be able to gather by attendance at public meetings and the clipping of articles from publications available on any newsstand." 144 U. S. App. D. C., at 78, 444 F. 2d, at 953.

The court took note of petitioners' argument "that nothing [detrimental to respondents] has been done, that nothing is contemplated to be done, and even if some action by the Army against [respondents] were possibly foreseeable, such would not present a presently justiciable controversy." With respect to this argument, the Court of Appeals had this to say:

> "This position of the [petitioners] does not accord full measure to the rather unique argument advanced by appellants [respondents]. While [respondents] do indeed argue that in the future it is possible that

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the exercise of their constitutional rights. Counsel responded that it was

"precisely the threat in this case that *in some future civil disorder* of some kind, the Army is going to come in with its list of troublemakers . . . and go rounding up people and putting them in military prisons somewhere." (Emphasis added.)

To this the court responded that "we still sit here with the writ of habeas corpus." At another point, counsel for respondents took a somewhat different approach in arguing that

"*we're not quite sure exactly what they have in mind* and that is precisely what causes the chill, the chilling effect." (Emphasis added.)

> information relating to matters far beyond the responsibilities of the military may be misused by the military to the detriment of these civilian [respondents], yet [respondents] do not attempt to establish this as a definitely foreseeable event, or to base their complaint on this ground. Rather, [respondents] contend that the *present existence of this system* of gathering and distributing information, allegedly far beyond the mission requirements of the Army, constitutes an impermissible burden on [respondents] and other persons similarly situated which exercises a *present inhibiting effect* on their full expression and utilization of their First Amendment rights . . . ." *Id.*, at 79, 444 F. 2d, at 954. (Emphasis in original.)

Our examination of the record satisfies us that the Court of Appeals properly identified the issue presented, namely, whether the jurisdiction of a federal court may be invoked by a complainant who alleges that the exercise of his First Amendment rights is being chilled by the mere existence, without more, of a governmental investigative and data-gathering activity that is alleged to be broader in scope than is reasonably necessary for the accomplishment of a valid governmental purpose. We conclude, however, that, having properly identified the issue, the Court of Appeals decided that issue incorrectly.[6]

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[6] Indeed, the Court of Appeals noted that it had reached a different conclusion when presented with a virtually identical issue in another of its recently decided cases, *Davis* v. *Ichord*, 143 U. S. App. D. C. 183, 442 F. 2d 1207 (1970). The plaintiffs in *Davis* were attacking the constitutionality of the House of Representatives Rule under which the House Committee on Internal Security conducts investigations and maintains files described by the plaintiffs as a "political blacklist." The court noted that any chilling effect to which the plaintiffs were subject arose from the mere existence

In recent years this Court has found in a number of cases that constitutional violations may arise from the deterrent, or "chilling," effect of governmental regulations that fall short of a direct prohibition against the exercise of First Amendment rights. *E. g., Baird* v. *State Bar of Arizona*, 401 U. S. 1 (1971); *Keyishian* v. *Board of Regents*, 385 U. S. 589 (1967); *Lamont* v. *Postmaster General*, 381 U. S. 301 (1965); *Baggett* v. *Bullitt*, 377 U. S. 360 (1964). In none of these cases, however, did the chilling effect arise merely from the individual's knowledge that a governmental agency was engaged in certain activities or from the individual's concomitant fear that, armed with the fruits of those activities, the agency might in the future take some *other* and additional action detrimental to that individual. Rather, in each of these cases, the challenged exercise of governmental power was regulatory, proscriptive, or compulsory in nature, and the complainant was either presently or prospectively subject to the regulations, proscriptions, or compulsions that he was challenging.

For example, the petitioner in *Baird* v. *State Bar of Arizona* had been denied admission to the bar solely because of her refusal to answer a question regarding the organizations with which she had been associated in the past. In announcing the judgment of the Court,

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of the Committee and its files and the mere possibility of the misuse of those files. In affirming the dismissal of the complaint, the court concluded that allegations of such a chilling effect could not be elevated to a justiciable claim merely by alleging as well that the challenged House Rule was overly broad and vague.

In deciding the case presently under review, the Court of Appeals distinguished *Davis* on the ground that the difference in the source of the chill in the two cases—a House Committee in *Davis* and the Army in the instant case—was controlling. We cannot agree that the jurisdictional question with which we are here concerned is to be resolved on the basis of the identity of the parties named as defendants in the complaint.

Mr. Justice Black said that "a State may not inquire about a man's views or associations solely for the purpose of withholding a right or benefit because of what he believes." 401 U. S., at 7. Some of the teachers who were the complainants in *Keyishian* v. *Board of Regents* had been discharged from employment by the State, and the others were threatened with such discharge, because of their political acts or associations. The Court concluded that the State's "complicated and intricate scheme" of laws and regulations relating to teacher loyalty could not withstand constitutional scrutiny; it was not permissible to inhibit First Amendment expression by forcing a teacher to "guess what conduct or utterance" might be in violation of that complex regulatory scheme and might thereby "lose him his position." 385 U. S., at 604. *Lamont* v. *Postmaster General* dealt with a governmental regulation requiring private individuals to make a special written request to the Post Office for delivery of each individual mailing of certain kinds of political literature addressed to them. In declaring the regulation invalid, the Court said: "The addressee carries an affirmative obligation which we do not think the Government may impose on him." 381 U. S., at 307. *Baggett* v. *Bullitt* dealt with a requirement that an oath of vague and uncertain meaning be taken as a condition of employment by a governmental agency. The Court said: "Those with a conscientious regard for what they solemnly swear or affirm, sensitive to the perils posed by the oath's indefinite language, avoid the risk of loss of employment, and perhaps profession, only by restricting their conduct to that which is unquestionably safe. Free speech may not be so inhibited." 377 U. S., at 372.

The decisions in these cases fully recognize that governmental action may be subject to constitutional challenge even though it has only an indirect effect on the

exercise of First Amendment rights. At the same time, however, these decisions have in no way eroded the

> "established principle that to entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action he must show that he has sustained or is immediately in danger of sustaining a direct injury as the result of that action . . . ." *Ex parte Levitt*, 302 U. S. 633, 634 (1937).

The respondents do not meet this test; their claim, simply stated, is that they disagree with the judgments made by the Executive Branch with respect to the type and amount of information the Army needs and that the very existence of the Army's data-gathering system produces a constitutionally impermissible chilling effect upon the exercise of their First Amendment rights. That alleged "chilling" effect may perhaps be seen as arising from respondents' very perception of the system as inappropriate to the Army's role under our form of government, or as arising from respondents' beliefs that it is inherently dangerous for the military to be concerned with activities in the civilian sector, or as arising from respondents' less generalized yet speculative apprehensiveness that the Army may at some future date misuse the information in some way that would cause direct harm to respondents.[7] Allegations of a subjective "chill"

[7] Not only have respondents left somewhat unclear the precise connection between the mere existence of the challenged system and their own alleged chill, but they have also cast considerable doubt on whether they themselves are in fact suffering from any such chill. Judge MacKinnon took cogent note of this difficulty in dissenting from the Court of Appeals' judgment, rendered as it was "on the facts of the case which emerge from the pleadings, affidavits and the admissions made to the trial court." 144 U. S. App. D. C., at 84, 444 F. 2d, at 959. At the oral argument before the District Court, counsel for respondents admitted that his clients

are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm; "the federal courts established pursuant to Article III of the Constitution do not render advisory opinions." *United Public Workers* v. *Mitchell*, 330 U. S. 75, 89 (1947).

Stripped to its essentials, what respondents appear to be seeking is a broad-scale investigation, conducted by themselves as private parties armed with the subpoena power of a federal district court and the power of cross-examination, to probe into the Army's intelligence-gathering activities, with the district court determining at the conclusion of that investigation the extent to which those activities may or may not be appropriate to the Army's mission. The following excerpt from the opinion of the Court of Appeals suggests the broad sweep implicit in its holding:

> "Apparently in the judgment of the civilian head of the Army not everything being done in the operation of this intelligence system was necessary to the performance of the military mission. *If the Secretary of the Army can formulate and implement such judgment based on facts within his De-*

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were "not people, obviously, who are cowed and chilled"; indeed, they were quite willing "to open themselves up to public investigation and public scrutiny." But, counsel argued, these respondents must "represent millions of Americans not nearly as forward [and] courageous" as themselves. It was Judge MacKinnon's view that this concession "constitutes a basic denial of practically their whole case." *Ibid.* Even assuming a justiciable controversy, if respondents themselves are not chilled, but seek only to represent those "millions" whom they believe are so chilled, respondents clearly lack that "personal stake in the outcome of the controversy" essential to standing. *Baker* v. *Carr*, 369 U. S. 186, 204 (1962). As the Court recently observed in *Moose Lodge No. 107* v. *Irvis*, 407 U. S. 163, 166, a litigant "has standing to seek redress for injuries done to him, but may not seek redress for injuries done to others."

> *partmental knowledge, the United States District Court can hear evidence, ascertain the facts, and decide what, if any, further restrictions on the complained-of activities are called for* to confine the military to their legitimate sphere of activity and to protect [respondents'] allegedly infringed constitutional rights." 144 U. S. App. D. C., at 83, 444 F. 2d, at 958. (Emphasis added.)

Carried to its logical end, this approach would have the federal courts as virtually continuing monitors of the wisdom and soundness of Executive action; such a role is appropriate for the Congress acting through its committees and the "power of the purse"; it is not the role of the judiciary, absent actual present or immediately threatened injury resulting from unlawful governmental action.

We, of course, intimate no view with respect to the propriety or desirability, from a policy standpoint, of the challenged activities of the Department of the Army; our conclusion is a narrow one, namely, that on this record the respondents have not presented a case for resolution by the courts.

The concerns of the Executive and Legislative Branches in response to disclosure of the Army surveillance activities—and indeed the claims alleged in the complaint—reflect a traditional and strong resistance of Americans to any military intrusion into civilian affairs. That tradition has deep roots in our history and found early expression, for example, in the Third Amendment's explicit prohibition against quartering soldiers in private homes without consent and in the constitutional provisions for civilian control of the military. Those prohibitions are not directly presented by this case, but their philosophical underpinnings explain our traditional insistence on limitations on military operations in peacetime. Indeed, when presented with claims of judicially cognizable in-

jury resulting from military intrusion into the civilian sector, federal courts are fully empowered to consider claims of those asserting such injury; there is nothing in our Nation's history or in this Court's decided cases, including our holding today, that can properly be seen as giving any indication that actual or threatened injury by reason of unlawful activities of the military would go unnoticed or unremedied.

Reversed.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE MARSHALL concurs, dissenting.

I

If Congress had passed a law authorizing the armed services to establish surveillance over the civilian population, a most serious constitutional problem would be presented. There is, however, no law authorizing surveillance over civilians, which in this case the Pentagon concededly had undertaken. The question is whether such authority may be implied. One can search the Constitution in vain for any such authority.

The start of the problem is the constitutional distinction between the "militia" and the Armed Forces. By Art. I, § 8, of the Constitution the militia is specifically confined to precise duties: "to execute the Laws of the Union, suppress Insurrections and repel Invasions."

This obviously means that the "militia" cannot be sent overseas to fight wars. It is purely a domestic arm of the governors of the several States,[1] save as it may be called under Art. I, § 8, of the Constitution into the federal service. Whether the "militia" could be

[1] I have expressed my doubts whether the "militia" loses its constitutional role by an Act of Congress which incorporates it in the armed services. *Drifka* v. *Brainard*, 89 S. Ct. 434, 21 L. Ed. 2d 427.

given powers comparable to those granted the FBI is a question not now raised, for we deal here not with the "militia" but with "armies." The Army, Navy, and Air Force are comprehended in the constitutional term "armies." Article I, § 8, provides that Congress may "raise and support Armies," and "provide and maintain a Navy," and make "Rules for the Government and Regulation of the land and naval Forces." And the Fifth Amendment excepts from the requirement of a presentment or indictment of a grand jury "cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger."

Acting under that authority, Congress has provided a code governing the Armed Services. That code sets the procedural standards for the Government and regulation of the land and naval forces. It is difficult to imagine how those powers can be extended to military surveillance over civilian affairs.[2]

The most pointed and relevant decisions of the Court on the limitation of military authority concern the attempt of the military to try civilians. The first leading case was *Ex parte Milligan*, 4 Wall. 2, 124, where the Court noted that the conflict between "civil liberty" and "martial law" is "irreconcilable." The Court which made that announcement would have been horrified at the prospect of the military—absent a regime of martial law—establishing a regime of surveillance over civilians. The power of the military to establish such a system is obviously less than the power of Congress to authorize such surveillance. For the authority of Congress is restricted by its power to "raise" armies, Art. I, § 8; and, to repeat, its authority over the Armed Forces is stated in these terms, "To make Rules for the Government and Regulation of the land and naval Forces."

[2] See Appendix I to this opinion, *infra*, p. 29.

The Constitution contains many provisions guaranteeing rights to persons. Those include the right to indictment by a grand jury and the right to trial by a jury of one's peers. They include the procedural safeguards of the Sixth Amendment in criminal prosecutions; the protection against double jeopardy, cruel and unusual punishments—and, of course, the First Amendment. The alarm was sounded in the Constitutional Convention about the dangers of the armed services. Luther Martin of Maryland said, "when a government wishes to deprive its citizens of freedom, and reduce them to slavery, it generally makes use of a standing army." [3] That danger, we have held, exists not only in bold acts of usurpation of power, but also in gradual encroachments. We held that court-martial jurisdiction cannot be extended to reach any person not a member of the Armed Forces at the times both of the offense and of the trial, which eliminates discharged soldiers. *Toth* v. *Quarles*, 350 U. S. 11. Neither civilian employees of the Armed Forces overseas, *McElroy* v. *Guagliardo*, 361 U. S. 281; *Grisham* v. *Hagan*, 361 U. S. 278, nor civilian dependents of military personnel accompanying them overseas, *Kinsella* v. *Singleton*, 361 U. S. 234; *Reid* v. *Covert*, 354 U. S. 1, may be tried by court-martial. And even as respects those in the Armed Forces we have held that an offense must be "service connected" to be tried by court-martial rather than by a civilian tribunal. *O'Callahan* v. *Parker*, 395 U. S. 258, 272.

The upshot is that the Armed Services—as distinguished from the "militia"—are not regulatory agencies or bureaus that may be created as Congress desires and granted such powers as seem necessary and proper. The authority to provide rules "governing" the Armed Services means the grant of authority to the Armed

[3] 3 M. Farrand, Records of the Federal Convention 209 (1911).

Services to govern themselves, not the authority to govern civilians. Even when "martial law" is declared, as it often has been, its appropriateness is subject to judicial review, *Sterling* v. *Constantin*, 287 U. S. 378, 401, 403-404.[4]

Our tradition reflects a desire for civilian supremacy and subordination of military power. The tradition goes back to the Declaration of Independence, in which it was recited that the King "has affected to render the Military independent of and superior to the Civil power." Thus, we have the "militia" restricted to domestic use, the restriction of appropriations to the "armies" to two years, Art. I, § 8, and the grant of command over the armies and the militia when called into actual service of the United States to the President, our chief civilian officer. The tradition of civilian control over the Armed Forces was stated by Chief Justice Warren: [5]

> "The military establishment is, of course, a necessary organ of government; but the reach of its power must be carefully limited lest the delicate balance between freedom and order be upset. The maintenance of the balance is made more difficult by

[4] Even some actions of the Armed Services in regulating their own conduct may be properly subjected to judicial scrutiny. Those who are not yet in the Armed Services have the protection of the full panoply of the laws governing admission procedures, see, *e. g.*, *McKart* v. *United States*, 395 U. S. 185; *Oestereich* v. *Selective Service Board*, 393 U. S. 233. Those in the service may use habeas corpus to test the jurisdiction of the Armed Services to try or detain them, see, *e. g.*, *Parisi* v. *Davidson*, 405 U. S. 34; *Noyd* v. *Bond*, 395 U. S. 683, 696 n. 8; *Reid* v. *Covert*, 354 U. S. 1; *Billings* v. *Truesdell*, 321 U. S. 542. And, those in the Armed Services may seek the protection of civilian, rather than military, courts when charged with crimes not service connected, *O'Callahan* v. *Parker*, 395 U. S. 258.

[5] The Bill of Rights and the Military, 37 N. Y. U. L. Rev. 181, 182, 193 (1962).

the fact that while the military serves the vital function of preserving the existence of the nation, it is, at the same time, the one element of government that exercises a type of authority not easily assimilated in a free society. . . .

. . . . . .

"In times of peace, the factors leading to an extraordinary deference to claims of military necessity have naturally not been as weighty. This has been true even in the all too imperfect peace that has been our lot for the past fifteen years—and quite rightly so, in my judgment. It is instructive to recall that our Nation at the time of the Constitutional Convention was also faced with formidable problems. The English, the French, the Spanish, and various tribes of hostile Indians were all ready and eager to subvert or occupy the fledgling Republic. Nevertheless, in that environment, our Founding Fathers conceived a Constitution and Bill of Rights replete with provisions indicating their determination to protect human rights. There was no call for a garrison state in those times of precarious peace. We should heed no such call now. If we were to fail in these days to enforce the freedom that until now has been the American citizen's birthright, we would be abandoning for the foreseeable future the constitutional balance of powers and rights in whose name we arm."

Thus, we have until today consistently adhered to the belief that

"[i]t is an unbending rule of law, that the exercise of military power, where the rights of the citizen are concerned, shall never be pushed beyond what the exigency requires." *Raymond* v. *Thomas*, 91 U. S. 712, 716.

It was in that tradition that *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, was decided, in which President Truman's seizure of the steel mills in the so-called Korean War was held unconstitutional. As stated by Justice Black:

> "The order cannot properly be sustained as an exercise of the President's military power as Commander in Chief of the Armed Forces. The Government attempts to do so by citing a number of cases upholding broad powers in military commanders engaged in day-to-day fighting in a theater of war. Such cases need not concern us here. Even though 'theater of war' be an expanding concept, we cannot with faithfulness to our constitutional system hold that the Commander in Chief of the Armed Forces has the ultimate power as such to take possession of private property in order to keep labor disputes from stopping production. This is a job for the Nation's lawmakers, not for its military authorities." *Id.*, at 587.

Madison expressed the fear of military dominance: [6]

> "The veteran legions of Rome were an overmatch for the undisciplined valor of all other nations, and rendered her the mistress of the world.
>
> "Not the less true is it, that the liberties of Rome proved the final victim to her military triumphs; and that the liberties of Europe, as far as they ever existed, have, with few exceptions, been the price of her military establishments. A standing force, therefore, is a dangerous, at the same time that it may be a necessary, provision. On the smallest scale it has its inconveniences. On an extensive

[6] The Federalist No. 41.

scale its consequences may be fatal. On any scale it is an object of laudable circumspection and precaution. A wise nation will combine all these considerations; and, whilst it does not rashly preclude itself from any resource which may become essential to its safety, will exert all its prudence in diminishing both the necessity and the danger of resorting to one which may be inauspicious to its liberties.

"The clearest marks of this prudence are stamped on the proposed Constitution. The Union itself, which it cements and secures, destroys every pretext for a military establishment which could be dangerous. America united, with a handful of troops, or without a single soldier, exhibits a more forbidding posture to foreign ambition than America disunited, with a hundred thousand veterans ready for combat."

As Chief Justice Warren has observed, the safeguards in the main body of the Constitution did not satisfy the people on their fear and concern of military dominance: [7]

"They were reluctant to ratify the Constitution without further assurances, and thus we find in the Bill of Rights Amendments 2 and 3, specifically authorizing a decentralized militia, guaranteeing the right of the people to keep and bear arms, and prohibiting the quartering of troops in any house in time of peace without the consent of the owner. Other Amendments guarantee the right of the people to assemble, to be secure in their homes against unreasonable searches and seizures, and in criminal cases to be accorded a speedy and public trial by an impartial jury after indictment in the district

[7] N. 5, *supra*, at 185.

> and state wherein the crime was committed. The only exceptions made to these civilian trial procedures are for cases arising in the land and naval forces. Although there is undoubtedly room for argument based on the frequently conflicting sources of history, it is not unreasonable to believe that our Founders' determination to guarantee the preeminence of civil over military power was an important element that prompted adoption of the Constitutional Amendments we call the Bill of Rights."

The action in turning the "armies" loose on surveillance of civilians was a gross repudiation of our traditions. The military, though important to us, is subservient and restricted purely to military missions. It even took an Act of Congress to allow a member of the Joint Chiefs of Staff to address the Congress; [8] and that small step did not go unnoticed but was in fact viewed with alarm by those respectful of the civilian tradition. Walter Lippmann has written that during World War II, he was asked to convey a message to Winston Churchill, while the latter was in Washington together with his chiefs of staff. It was desired that Churchill should permit his chiefs of staff to testify before Congress as to the proper strategy for waging the war. Lippmann explains, however, that he "never finished the message. For the old lion let out a roar

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[8] The National Security Act of 1947, amended by § 5 of the Act of Aug. 10, 1949, 63 Stat. 580, provided in § 202 (c) (6):

"No provision of this Act shall be so construed as to prevent a Secretary of a military department or a member of the Joint Chiefs of Staff from presenting to the Congress, on his own initiative, after first so informing the Secretary of Defense, any recommendation relating to the Department of Defense that he may deem proper." See H. R. Conf. Rep. No. 1142, 81st Cong., 1st Sess., 18. This provision is now codified as 10 U. S. C. § 141 (c).

demanding to know why I was so ignorant of the British way of doing things that I could dare to suggest that a British general should address a parliamentary body.

> "As I remember it, what he said was 'I am the Minister of Defense and I, not the generals, will state the policy of His Majesty's government.'" The Intervention of the General, Washington Post, Apr. 27, 1967, Sec. A, p. 21, col. 1.[9]

The act of turning the military loose on civilians even if sanctioned by an Act of Congress, which it has not been, would raise serious and profound constitutional questions. Standing as it does only on brute power and Pentagon policy, it must be repudiated as a usurpation dangerous to the civil liberties on which free men are dependent. For, as Senator Sam Ervin has said, "this claim of an inherent executive branch power of investigation and surveillance on the basis of people's beliefs and attitudes may be more of a threat to our internal security than any enemies beyond our borders." Privacy and Government Investigations, 1971 U. Ill. L. F. 137, 153.

II

The claim that respondents have no standing to challenge the Army's surveillance of them and the other members of the class they seek to represent is too transparent for serious argument. The surveillance of the Army over the civilian sector—a part of society hitherto immune from its control—is a serious charge. It is alleged that the Army maintains files on the membership, ideology, programs, and practices of virtually every activist political group in the country, including groups such as the Southern Christian Leadership Conference, Clergy

[9] The full account is contained in Appendix II, *infra*, at 33.

and Laymen United Against the War in Vietnam, the American Civil Liberties Union, Women's Strike for Peace, and the National Association for the Advancement of Colored People. The Army uses undercover agents to infiltrate these civilian groups and to reach into confidential files of students and other groups. The Army moves as a secret group among civilian audiences, using cameras and electronic ears for surveillance. The data it collects are distributed to civilian officials in state, federal, and local governments and to each military intelligence unit and troop command under the Army's jurisdiction (both here and abroad); and these data are stored in one or more data banks.

Those are the allegations; and the charge is that the purpose and effect of the system of surveillance is to harass and intimidate the respondents and to deter them from exercising their rights of political expression, protest, and dissent "by invading their privacy, damaging their reputations, adversely affecting their employment and their opportunities for employment, and in other ways." Their fear is that "permanent reports of their activities will be maintained in the Army's data bank, and their 'profiles' will appear in the so-called 'Blacklist' and that all of this information will be released to numerous federal and state agencies upon request."

Judge Wilkey, speaking for the Court of Appeals, properly inferred that this Army surveillance "exercises a *present inhibiting effect* on their full expression and utilization of their First Amendment rights." 144 U. S. App. D. C. 72, 79, 444 F. 2d 947, 954. That is the test. The "deterrent effect" on First Amendment rights by government oversight marks an unconstitutional intrusion, *Lamont* v. *Postmaster General,* 381 U. S. 301, 307. Or, as stated by MR. JUSTICE BRENNAN, "inhibition as well as prohibition against the exercise of precious First

Amendment rights is a power denied to government." *Id.*, at 309. When refusal of the Court to pass on the constitutionality of an Act under the normal consideration of forbearance "would itself have an inhibitory effect on freedom of speech" then the Court will act. *United States* v. *Raines*, 362 U. S. 17, 22.

As stated by the Supreme Court of New Jersey, "there is good reason to permit the strong to speak for the weak or the timid in First Amendment matters." *Anderson* v. *Sills*, 56 N. J. 210, 220, 265 A. 2d 678, 684 (1970).

One need not wait to sue until he loses his job or until his reputation is defamed. To withhold standing to sue until that time arrives would in practical effect immunize from judicial scrutiny all surveillance activities, regardless of their misuse and their deterrent effect. As stated in *Flast* v. *Cohen*, 392 U. S. 83, 101, "in terms of Article III limitations on federal court jurisdiction, the question of standing is related only to whether the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution." Or, as we put it in *Baker* v. *Carr*, 369 U. S. 186, 204, the gist of the standing issue is whether the party seeking relief has "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."

The present controversy is not a remote, imaginary conflict. Respondents were targets of the Army's surveillance. First, the surveillance was not casual but massive and comprehensive. Second, the intelligence reports were regularly and widely circulated and were exchanged with reports of the FBI, state and municipal police departments, and the CIA. Third, the Army's

surveillance was not collecting material in public records but staking out teams of agents, infiltrating undercover agents, creating command posts inside meetings, posing as press photographers and newsmen, posing as TV newsmen, posing as students, and shadowing public figures.

Finally, we know from the hearings conducted by Senator Ervin that the Army has misused or abused its reporting functions. Thus, Senator Ervin concluded that reports of the Army have been "taken from the Intelligence Command's highly inaccurate civil disturbance teletype and filed in Army dossiers on persons who have held, or were being considered for, security clearances, thus contaminating what are supposed to be investigative reports with unverified gossip and rumor. This practice directly jeopardized the employment and employment opportunities of persons seeking sensitive positions with the federal government or defense industry." [10]

Surveillance of civilians is none of the Army's constitutional business and Congress has not undertaken to entrust it with any such function. The fact that since this litigation started the Army's surveillance may have been cut back is not an end of the matter. Whether there has been an actual cutback or whether the announcements are merely a ruse can be determined only after a hearing in the District Court. We are advised by an *amicus curiae* brief filed by a group of former Army Intelligence Agents that Army surveillance of civilians is rooted in secret programs of long standing:

> "Army intelligence has been maintaining an unauthorized watch over civilian political activity for nearly 30 years. Nor is this the first time that

[10] Hearings on Federal Data Banks, Computers and the Bill of Rights, before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 92d Cong., 1st Sess. (1971).

> Army intelligence has, without notice to its civilian superiors, overstepped its mission. From 1917 to 1924, the Corps of Intelligence Police maintained a massive surveillance of civilian political activity which involved the use of hundreds of civilian informants, the infiltration of civilian organizations and the seizure of dissenters and unionists, sometimes without charges. That activity was opposed—then as now—by civilian officials on those occasions when they found out about it, but it continued unabated until post-war disarmament and economies finally eliminated the bureaucracy that conducted it." Pp. 29–30.

This case involves a cancer in our body politic. It is a measure of the disease which afflicts us. Army surveillance, like Army regimentation, is at war with the principles of the First Amendment. Those who already walk submissively will say there is no cause for alarm. But submissiveness is not our heritage. The First Amendment was designed to allow rebellion to remain as our heritage. The Constitution was designed to keep government off the backs of the people. The Bill of Rights was added to keep the precincts of belief and expression, of the press, of political and social activities free from surveillance. The Bill of Rights was designed to keep agents of government and official eavesdroppers away from assemblies of people. The aim was to allow men to be free and independent and to assert their rights against government. There can be no influence more paralyzing of that objective than Army surveillance. When an intelligence officer looks over every nonconformist's shoulder in the library, or walks invisibly by his side in a picket line, or infiltrates his club, the America once extolled as the voice of liberty heard around the world no longer is

cast in the image which Jefferson and Madison designed, but more in the Russian image, depicted in Appendix III to this opinion.

APPENDIX I TO OPINION OF DOUGLAS, J., DISSENTING

The narrowly circumscribed domestic role which Congress has by statute authorized the Army to play is clearly an insufficient basis for the wholesale civilian surveillance of which respondents complain. The entire domestic mission of the armed services is delimited by nine statutes.

Four define the Army's narrow role as a back-up for civilian authority where the latter has proved insufficient to cope with insurrection:

10 U. S. C. § 331:

"Whenever there is an insurrection in any State against its government, the President may, upon the request of its legislature or of its governor if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces, as he considers necessary to suppress the insurrection."

10 U. S. C. § 332:

"Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State or Territory by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion."